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| <b>PAID T.R.A.</b> |               |
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Also Admitted in New York  
and Maryland

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August 2, 2000

**VIA OVERNIGHT MAIL**

Mr. David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

00-00697

Re: U.S. TelePacific Corp. dba TelePacific Communications

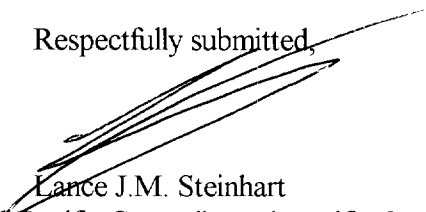
Dear Mr. Waddell:

Enclosed please find for filing an original and one (1) copy of U.S. TelePacific Corp. dba TelePacific Communications' Application for a Certificate of Public Convenience and Necessity to Provide Competing Local Exchange and Interexchange Telecommunications Services in Tennessee. I have also enclosed a check in the amount of \$50.00 payable to the "Tennessee Regulatory Authority" for the filing fee.

**APPLICANT HAS ALSO ENCLOSED ONE COPY OF ITS FINANCIAL INFORMATION IN A SEPARATE ENVELOPE AND HEREBY RESPECTFULLY REQUESTS CONFIDENTIAL TREATMENT OF THE ENCLOSED FINANCIAL INFORMATION THAT CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION. APPLICANT EXPECTS THAT THIS INFORMATION WILL BE RESTRICTED TO COUNSEL, AGENTS AND EMPLOYEES WHO ARE SPECIFICALLY ASSIGNED TO THIS APPLICATION BY THE COMMISSION.**

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self addressed, postage prepaid envelope. If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me. Thank you.

Respectfully submitted,

  
Lance J.M. Steinhart  
Attorney for U.S. TelePacific Corp. dba TelePacific Communications

Enclosures

cc: Jane Delahanty (w/enc)

**POSTED**  
8/3/00

**STATE OF TENNESSEE  
BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION**

**In re:** )  
 )  
**Application of** )  
**US TelePacific Corp.** )  
**d/b/a TelePacific Communications** )  
**For a Certificate of Public** ) **DOCKET NO.**  
**Convenience and Necessity to** )  
**Provide Competing** )  
**Local Exchange And Interexchange** )  
**Telecommunications Services** )

REC'D  
STATE OF TENNESSEE  
APR 8 11 2 19  
EXECUTIVE SECRETARY

00-00697

**APPLICATION OF US TELEPACIFIC CORP. D/B/A TELEPACIFIC  
COMMUNICATIONS FOR AUTHORITY  
TO PROVIDE COMPETING LOCAL EXCHANGE & INTEREXCHANGE SERVICE**

US TelePacific Corp. d/b/a TelePacific Communications ("TelePacific" or "Applicant"), pursuant to T.C.A. §§ 65-2-103, 65-2-102 and 65-4-201; Section 253 of the Federal Telecommunications Act of 1996; and Section 1220-4-8-.04 of the Rules of the Tennessee Public Service Commission Division of Public Utilities, respectfully submits this Application for Authority to Provide Competitive Local Exchange and Interexchange Telecommunications Services ("Application") in the State of Tennessee.

TelePacific intends to offer local exchange and interexchange service initially to business customers. The Company intends to provide local exchange service to customers located in non-rural local exchange carriers' service areas of Tennessee. Applicant intends to provide interexchange service statewide. Should its Application be granted, TelePacific plans to commence offering local exchange service after the establishment of the appropriate and necessary resale and interconnection arrangements with the incumbent Local Exchange Carriers ("LECs"). Initially, Applicant will be negotiating an interconnection/resale agreement with BellSouth to provide local service.

Approval of this Application will promote the public interest by increasing the level of competition in the Tennessee telecommunications market. Ultimately, competition will compel all telecommunications service providers to operate more efficiently and pass the resultant cost savings on to consumers. In addition, as a result of competition, the overall quality of local exchange and interexchange service will improve. Applicant is willing and able to adhere to all applicable TRA policies, rules and orders.

In support of its Application, TelePacific states as follows:

**I. Introduction**

1. The name and address of the Applicant are:  
US TelePacific Corp. d/b/a TelePacific Communications  
515 S. Flower Street, 49th Floor  
Los Angeles, CA 90071

The following is a list of applicant's corporate officers and directors:

Officers

|                   |                 |
|-------------------|-----------------|
| David P. Glickman | Chairman        |
| Richard Kimsey    | CEO             |
| David Benwell     | CFO             |
| Kirstin Gooldy    | Secretary       |
| Phil Puccio       | Asst. Secretary |
| Jane Delahanty    | Asst. Secretary |

Directors

|                       |                     |
|-----------------------|---------------------|
| David P. Glickman     | Christopher O'Brien |
| David M. Flaum        | Christopher Stadler |
| Robert Gordon         |                     |
| Stephen Rader         |                     |
| R. Rudolph Reinfrank  |                     |
| Michael E. Tennenbaum |                     |
| Governor Pete Wilson  |                     |

The above-named individuals can be reached at:

US TelePacific Corp. d/b/a TelePacific Communications  
515 S. Flower Street, 49th Floor, Los Angeles, CA 90071

Telephone: 213-213-3000

TelePacific is currently authorized to provide local exchange and interexchange services in California, Colorado, Florida, Indiana, Kansas, Massachusetts, Michigan, New Jersey, Nevada, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin and the District of Columbia, and interexchange services only in Georgia, Missouri and North Carolina. TelePacific is in the process of applying for authorization to provide competitive local exchange and interexchange services in approximately 30 states. Applicant has not been denied authority for any of the services for which it seeks authority in this Application. Applicant is currently providing service in California and Nevada.

The name, address and telephone number of a contact person responsible for and knowledgeable about Applicant's operations are:

Jane Delahanty, Asst. VP Regulatory Affairs  
US TelePacific Corp. d/b/a TelePacific Communications  
515 S. Flower Street, 49th Floor  
Los Angeles, CA 90071  
(213) 213-3000

The name, address and telephone number of a person responsible customer service is:

Vicky Rifkin, Customer Service Manager  
US TelePacific Corp. d/b/a TelePacific Communications  
515 S. Flower Street, 49th Floor  
Los Angeles, CA 90071  
(213) 213-3000  
(877) 487-8722 (toll-free customer service)

2. All correspondence, notices, inquiries and other communications regarding this Application should be directed to:

Lance J.M. Steinhart  
Attorney at Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097  
Telephone: 770/232-9200  
Facsimile: 770/232-9208

3. In support of this Application, the following exhibits are attached hereto:
- a. Exhibit A - TelePacific's Certificate of Incorporation filed with the Secretary of State for the State of California and Bylaws;
  - b. Exhibit B - TelePacific's Certificate of Authority to Operate in Tennessee as a Foreign Corporation;
  - c. Exhibit C - TelePacific's Audited Financial Statements for the years ended December 31, 1998 and December 31, 1999; Projected Financial Statements, including capital expenditures budget & estimated cost of network, and sources of funding (reciprocal compensation not included in financial models because company does not target ISPs), which are being filed in a separate sealed envelope as "Confidential".
  - d. Exhibit D - Biographies of selected TelePacific management.
  - e. Exhibit E - Corporate Organization Chart
  - f. Exhibit F - IntraLATA Presubscription Implementation Plan
  - g. Exhibit G - Small and Minority-Owned Telecommunications Business Participation Plan
  - h. Exhibit H - Pre-Filed Testimony
  - i. Exhibit I - Numbering Issues & Tennessee Specific Operational Issues

## **II. Description of the Applicant**

### **1. General Information**

Applicant is a California corporation, which was formed on July 17, 1996 as Justice Long Distance Corp. and changed its name on July 27, 1998. The company began operations on December 15, 1998. The company is a wholly-owned operating subsidiary of U.S. TelePacific Holdings Corp. The company is headquartered at 515 S. Flower Street, 49th Floor, Los Angeles, CA 90071.

## **2. Customer Service**

TelePacific's customer service department may be contacted via a toll-free number, 1-877-487-8722, or a local number, 213-213-3000. The Company maintains a Customer Service Department exclusively for customer's questions, requests for service, complaints and trouble handling. The Customer Service Department is located at 515 S. Flower Street, 49th Floor, Los Angeles, CA 90071. The Company also intends to have a locally staffed office at one or more hub site locations in the state and will provide its customers with a Customer Service number which will be available 24 hours per day, 7 days per week. In addition, customers may contact the company via its website: [www.telepacific.com](http://www.telepacific.com).

Complaint Procedures- The customer shall pose any inquiries or disputes directly to the Company for resolution. Written communications should be directed to the Company's Customer Service department. All undisputed portions of any outstanding balance due are to be paid while resolution of the inquiry or dispute is pending. The Company will investigate a customer inquiry or dispute and report the findings to the customer. If the Company finds its actions to be consistent with its Tariff, the Company will inform the customer of its no fault finding and require full payment of any outstanding balance due. If the customer is not satisfied with the Company's resolution of an inquiry or dispute, the customer may refer the matter to the Commission for determination.

### **III. TelePacific Possesses the Technical, Managerial and Financial Expertise Necessary to Provide Local Exchange Service**

TelePacific possesses the requisite financial, managerial, and technical capabilities to operate as a competitive telecommunications provider. These capabilities are explained in detail below.

#### **1. Financial Qualifications**

TelePacific is financially able to provide the services it proposes to offer as evidenced by its Audited Financial Statements for the years ended December 31, 1998 and December 31, 1999. The company will file a bond by September 1, 2000.

#### **2. Managerial Qualifications**

TelePacific's senior management team is highly skilled, and has had extensive experience in business and the telecommunications industry, as can be seen in the biographical information in Exhibit D. Using this expertise, TelePacific's management team has developed innovative marketing and customer care programs, and provides its customers with high quality technologically advanced services at competitive rates.

TelePacific is currently authorized to provide local exchange and interexchange services in California, Colorado, Florida, Indiana, Kansas, Massachusetts, Michigan, New Jersey, Nevada, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin and the District of Columbia, and interexchange services only in Georgia, Missouri and North Carolina. TelePacific is in the process of applying for authorization to provide competitive local exchange and interexchange services in approximately 30 states. Applicant has not been denied authority for any of the services for which it seeks authority in this Application. Applicant is currently providing service in California and Nevada. No complaints have been filed against Applicant or any of its affiliates by any state or federal agency.

### **3. Technical Qualifications**

TelePacific will initially resell the facilities of the existing LECs or underlying carriers that presently serve Tennessee. TelePacific will also use unbundled network elements and services purchased from BellSouth and other incumbent local exchange providers, where applicable, to provide facilities-based service. For facilities-based service, the Company employs a “smart build” strategy in designing its network. TelePacific provides voice, high speed data and internet access services through a combination of its own switches such as the Lucent 5 ESS switch, ADSL/SDSL transport and Internet service equipment and the latest Optical multiplexer DACs configurations and leases its network facilities from other service providers. Services are delivered over a combination of transmission media including through incumbent local carriers' unbundled loop network, both copper and fiber and transport networks, as well as via TelePacific constructed facilities.

The Company is currently field testing and is nearing deployment of a new and innovative network structure using collapsed switch technology. We plan to initially deploy collapsed switches in markets targeted for expansion. Collapsed switches effectively combine the capabilities of a voice switch and a data switch into one packet-based voice data switch. When appropriate, the Lucent or similar switching technology may also be deployed.

Initial rollout is planned for the Nashville market area. TelePacific plans to install initial switching equipment in the Nashville area with additional switches to be deployed in other locations based upon customer demand.



As the foregoing illustrates, TelePacific possesses considerable technical telecommunications expertise. TelePacific has been providing a wide range of high quality voice and data telecommunications services to consumers since December 1998. Applicant can also rely upon the technical expertise and telecommunications experience of its underlying carriers. Thus, TelePacific is technically qualified to provide local exchange and interexchange telecommunications services in Tennessee. Applicant also is willing to adhere to all applicable Commission policies, rules and orders in the provisioning of its services.

#### **IV. Approval of TelePacific's Application is in the Public Interest**

Granting TelePacific's Application is consistent with the public interest, and, in that regard Applicant makes the following representations to the Commission:

- a. Applicant possesses the technical, financial, and managerial resources sufficient to provide the services offered;
- b. Applicant's services will meet the service standards required by the Commission;
- c. The provision of services by Applicant will contribute to the availability of affordable local exchange service;
- d. Applicant, to the extent it is required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and,
- e. The provision of local exchange services by Applicant will not adversely impact the public interest.

A competitive market is a better means to achieve affordability and quality of service than a monopoly environment. As competitors vie for market share, they will compete based upon price, innovation and customer service. Providers whose products are not competitive and do not meet the needs of consumers will not gain market share and may ultimately, be eliminated from the industry.

Additionally, TelePacific's entry into the local exchange and interexchange markets will not unreasonably prejudice or disadvantage any telephone service providers. Incumbent local exchange carriers presently serve the vast majority of the local exchange customers in Tennessee. The major advantages of incumbency (i.e., ownership of the existing local network as well as access to, and long-standing relationships with, every local customer) constitute a substantial obstacle to new entrants. Exchange services competition will stimulate the demand for the services supplied by all local service providers, including those of the incumbent LECs. Thus, in a competitive market, there will be increased potential for such LECs to generate higher revenues. Additionally, in a competitive market, incumbent providers will have market incentives to improve the efficiency of their operations, thereby reducing their costs.

Currently, Tennessee consumers have a limited choice with regard to the provision of local exchange telecommunications service. A competitive local exchange service market comprised of incumbents and competitive providers such as TelePacific will offer consumers the option and, therefore, will better satisfy the needs of various market segments. In this regard, approval of this Application is clearly in the public interest.

**V. Description of Services Offered and Service Territory**

TelePacific expects to offer a full array of local exchange and interexchange services to customers, including the following:

Interexchange (switched and dedicated services):

- A. 1+ and 101XXXX outbound dialing;
- B. 800/888 toll-free inbound dialing;
- C. Calling cards; and
- D. Data Services.

Local Exchange:

- A. Local Exchange Services for customers that will enable customers to originate and terminate local calls in the local calling area.
- B. Switched local exchange services, including basic service, trunks, carrier access, and any other switched local services that currently exist or will exist in the future.
- C. Non-switched local services (e.g., private line) that currently exist or will exist in the future.
- D. Centrex and/or Centrex-like services that currently exist or will exist in the future.
- E. Digital Subscriber Line, ISDN, and other high capacity services.

In addition to the services listed above, TelePacific, through interconnection with other carriers, will offer such services as, 9-1-1 Emergency Services, directory assistance and operator services.

Prior to providing local exchange services to the public in Tennessee, TelePacific will file a tariff and/or price list with the Commission, which will contain a description of services to be provided, all rules and regulations applicable to such services, and proposed rates for such services. The Applicant's IntraLATA Presubscription Implementation Plan is attached hereto as Exhibit F.

## **VI. Waivers and Regulatory Compliance**

TelePacific requests that the Commission grant it a waiver of those current regulatory requirements which are inapplicable to competitive local service providers such as TelePacific. Such rules are not appropriate or necessary for competitive providers and constitute an economic barrier to entry into the local exchange market.

### **1. Financial Record-Keeping System**

a. TelePacific requests that it be exempt from any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation, and as a competitive carrier, TelePacific does not maintain its financial records in this manner.

b. As a competitive carrier, TelePacific maintains its book of accounts in accordance with Generally Accepted Accounting Principles ("GAAP"). Neither the FCC, nor other Commissions, have required TelePacific to maintain its records under the USOA for purposes of TelePacific's operations. Thus, TelePacific does not possess the detailed cost data required by USOA, nor does it maintain detailed records on a state-specific basis. As a competitive provider, TelePacific's network operations are integrated to achieve maximum efficiency. Having to maintain records pertaining specifically to its Tennessee local service operations would place an extreme burden on TelePacific.

c. Moreover, TelePacific asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate TelePacific's operations. Therefore, TelePacific hereby respectfully requests to be exempted from the any USOA requirements of the Commission.

## **2. Local Exchange Directories**

TelePacific requests that it not be required to publish local exchange directories. TelePacific will make arrangements with the incumbent LECs whereby the names of TelePacific's customers will be included in the directories published by the incumbent LECs. These directories will be distributed to TelePacific's customers. This approach is entirely reasonable and will have a direct benefit to the customers of both TelePacific and the incumbent LEC since they need only refer to one directory for a universal listing of customer information. It would be an unnecessary burden on TelePacific to require that it publish and distribute its own directory to all customers located within each exchange area, particularly since nearly all of these customers will be customers of the incumbent LECs. It is more efficient for TelePacific to simply include its limited customer list in the existing directories of the incumbent LECs.

## **3. Reporting Requirements**

TelePacific further requests waivers of any reporting requirements which, although applicable to incumbent LECs, are not applicable to competitive providers such as TelePacific. Such requirements: (1) are not consistent with the demands of the competitive market; or (2) constitute an undue burden on a competitive provider, thereby requiring an inefficient allocation of its limited resources. In addition, TelePacific respectfully reserves the right to seek any additional regulatory waivers which may be required for TelePacific to compete effectively in Tennessee local exchange services market.

## **VII. Regulatory Obligations**

Applicant shall provide, either directly or indirectly or through arrangements with other carriers or companies, to the extent required by law or regulation:

1. Access to 911 and E 911 emergency service;
2. White page directory listings and directory assistance;
3. Consumer access to and support for the Tennessee Relay Center in the same manner as incumbent local exchange telephone companies;
4. Free blocking service for 900, 976 type services in accordance with Commission policy;
5. Lifeline and Link-up services to qualifying citizens of this state, if applicable;
6. Educational discounts in existence as of June 6, 1996

Applicant shall also:

1. Provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are determined by the Commission;
2. Provide interconnection with other certificated carriers or Commission authorized carriers on a nondiscriminatory basis under reasonable terms and conditions;
3. Comply with Commission basic service standards as defined in any applicable rules and decisions of the Commission;
4. Provide equal access to authorized inter-and intraLATA long distance providers, unless otherwise exempted by the Commission.

### **VIII. Conclusion**

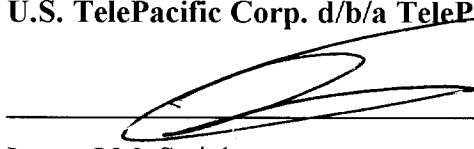
This Application demonstrates that US TelePacific Corp. d/b/a TelePacific Communications, possesses the technical, financial and managerial resources to provide resold and facilities-based local exchange and interexchange service in the State of Tennessee. Furthermore, granting this Application will promote the public interest by increasing the level of competition in the Tennessee telecommunications market. Ultimately, competition will compel all exchange telecommunications service providers to operate more efficiently and with resulting reduced prices for consumers. In addition, as a result of competition, the overall quality of local exchange service will improve. As stated above, Applicant does not intend to provide local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, until Applicant provides such LECs notice of intent at least 30 days prior to the date of the intended service, or as otherwise required by law.

Wherefore, US TelePacific Corp. d/b/a TelePacific Communications, respectfully petitions this Commission for a Certificate of Public Convenience and Necessity to Provide Competing local exchange and interexchange telecommunications services in the State of Tennessee in accordance with this Application and for such other relief as it deems necessary and appropriate.

Respectfully submitted,

**U.S. TelePacific Corp. d/b/a TelePacific**

**Communications**



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Lance J.M. Steinhart  
6455 East Johns Crossing, Suite 285  
Duluth, Georgia 30097  
770/232-9200  
*Attorney for Applicant*

  
\_\_\_\_\_, 2000  
Duluth, Georgia




**VERIFICATION OF APPLICANT**

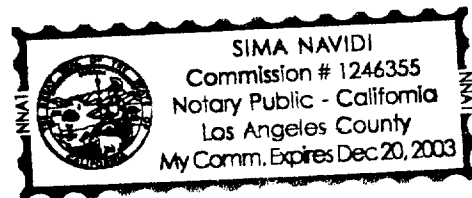
I, Jane Delahanty, Assistant Vice President of Regulatory Affairs of US TelePacific Corp. d/b/a/ TelePacific Communications, a California Corporation, the applicant for a Certificate of Public Convenience and Necessity from the Public Service commission of the State of Tennessee, verify that based on information and belief, I have knowledge of the statements in the foregoing Application, and I declare that they are true and correct.

  
**Jane Delahanty**  
**Asst. VP of Regulatory Affairs**  
**US TelePacific Corp. d/b/a TelePacific Communications**

Sworn to me, the undersigned  
Notary Public on this  
19<sup>th</sup> day of July, 2000.

State of California  
County of Los Angeles

  
\_\_\_\_\_  
Notary Public



**EXHIBIT "A"**  
**ARTICLES OF INCORPORATION & BYLAWS**

# State of California

## SECRETARY OF STATE

### CERTIFICATE OF STATUS DOMESTIC CORPORATION

I, **BILL JONES**, Secretary of State of the State of California, hereby certify:

That on the 17th day of July, 19 96,

U.S. TELEPACIFIC CORP.

became incorporated under the laws of the State of California by filing its Articles of Incorporation in this office; and

That no record exists in this office of a certificate of dissolution of said corporation nor of a court order declaring dissolution thereof, nor of a merger or consolidation which terminated its existence; and

That said corporation's corporate powers, rights and privileges are not suspended on the records of this office; and

That according to the records of this office, the said corporation is authorized to exercise all its corporate powers, rights and privileges and is in good legal standing in the State of California; and

That no information is available in this office on the financial condition, business activity or practices of this corporation.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

January 24, 2000.



*Bill Jones*

Secretary of State

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
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SECRETARY OF STATE

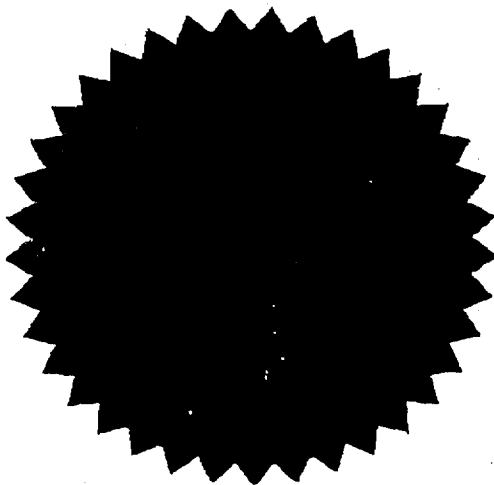


I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 1 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

OCT 9 1997

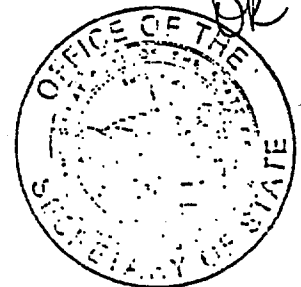


*Bill Jones*

Secretary of State

# State of California

## SECRETARY OF STATE



I. *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 17 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this day of

*DEC*



*Bill Jones*

Secretary of State

1974331  
**AMENDED AND RESTATED  
 ARTICLES OF INCORPORATION  
 OF  
 U.S. TELEPACIFIC CORP.  
 a California corporation**

FILED *NG*  
 In the office of the Secretary of State  
 of the State of California  
 NOV 6 1999

*Bill Jones*  
 BILL JONES, Secretary of State

The undersigned, David P. Glickman and Kirstin Gooldy, hereby certify that:

1. They are the Chief Executive Officer and Assistant Secretary, respectively, of U.S. TelePacific Corp. (the "Corporation").
2. The Articles of Incorporation of the Corporation are amended and restated in their entirety to read as follows:

**ARTICLE I**

The name of the Corporation is U.S. TelePacific Corp.

**ARTICLE II**

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

**ARTICLE III.**

Section A. Authorized Capital. The Corporation shall be authorized to issue two classes of stock to be designated, respectively, "Preferred Stock" and "Common Stock"; the total number of shares which the Corporation shall have authority to issue is One Hundred Million Four Hundred Fifteen (100,000,415); the total number of shares of Preferred Stock shall be Four Hundred Fifteen (415); and the total number of shares of Common Stock shall be One Hundred Million (100,000,000).

Section B. Preferred Stock. The Preferred Stock shall be divided into series. The first series shall consist of Two Hundred Fifty (250) shares and shall be designated "Series A Preferred Stock" and the second series shall consist of One Hundred Sixty-Five (165) shares and shall be designated "Series B Preferred Stock."

Section C. The powers, preferences, rights, restrictions and other matters relating to the Preferred Stock are as follows:

1. Dividend Rights

A. The holders of record of the Series A Preferred Stock (collectively, the "Series A Holders," and individually, a "Series A Holder") and the holders of record of the Series B Preferred Stock (collectively, the "Series B Holders," individually, a "Series B Holder" and collectively with the Series A Holders, the "Preferred Holders") of the Corporation shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the "Board"), out of the funds of the Corporation legally available therefor, a cumulative cash dividend (the "Preferred Stock Dividend") at a simple interest rate of 10% of the Funded Portion (as specified below) of the Liquidation Value (as specified below) per share per annum, payable upon a conversion, liquidation or redemption of each share of Series A Preferred Stock (each, a "Series A Preferred Share") and each share of Series B Preferred Stock (each, a "Series B Preferred Share" and collectively with the Series A Preferred Shares, the "Preferred Shares"). The Funded Portion means with respect to the Series A Preferred Shares and the Series B Preferred Shares, respectively, the amount of consideration paid for such shares in accordance with the terms of the Preferred Stock Purchase Agreement, dated as of April 14, 1999 (as amended, modified or restated from time to time), between the Corporation and the Series A Holders or the Series B Preferred Stock Purchase Agreement, dated as of November 9, 1999 (as amended, modified or restated from time to time), between the Corporation and the Series B Holders, respectively, and as shown from time to time on the certificate(s) representing the Series A Preferred Shares or the Series B Preferred Shares, as the case may be. The Liquidation Value will be \$100,000 (or such lesser Funded Portion) per share. Preferred Stock Dividends will accrue on the Funded Portion of each Preferred Share on a quarterly basis (pro rata for periods shorter than a full quarter) from and excluding the date of payment by a Preferred Holder for such portion of the Preferred Share to and including the date of payment of the Preferred Stock Dividends on such Preferred Share, whether or not such Preferred Stock Dividends have been declared from time to time and whether or not there are funds of the Corporation legally available from time to time for the payment of the Preferred Stock Dividends.

B. If the funds of the Corporation legally available for payment of Preferred Stock Dividends on any date when such dividends are payable are insufficient to pay the total amount of Preferred Stock Dividends then accrued with respect to the Series A Preferred Stock or the Series B Preferred Stock, or if the Corporation is prohibited from paying such Preferred Stock Dividends by applicable law or by any contract or agreement, including, but not limited to, any loan agreement, to which the Corporation is a party, the Corporation will use those funds legally available and not so prohibited for the payment of any such Preferred Stock Dividends. Subject to Section C.5.F., on such date as additional funds of the Corporation are legally available for the payment of such Preferred Stock Dividends, or such prohibition no longer applies, such funds will be used to pay accrued and unpaid Preferred Stock Dividends.

C. Upon a Qualified Initial Public Offering (as defined below), the Corporation may elect to pay accrued and unpaid Preferred Stock Dividends to Series A Holders in Series A Preferred Shares and to Series B Holders in Series B Preferred Shares (with each Series A

Preferred Share and each Series B Preferred Share valued at the Liquidation Value), except that no fractional Series A Preferred Shares or Series B Preferred Shares may be issued for such purpose. After the initial issuance of Series A Preferred Shares and Series B Preferred Shares by the Corporation, the Corporation may not issue any Series A Preferred Shares other than to Series A Holders, or Series B Preferred Shares other than to Series B Holders, in accordance with the preceding sentence.

D. Accrued and unpaid Preferred Stock Dividends on Preferred Shares will not bear interest prior to the date such Preferred Stock Dividends are due and payable. After accrued and unpaid Preferred Stock Dividends on Preferred Shares become due and payable, such accrued and unpaid Preferred Stock Dividends will bear interest at a rate of the lesser of 12% per annum or the highest amount permitted by applicable law. Preferred Stock Dividends paid on the Preferred Shares in an amount less than the total amount of such Preferred Stock Dividends at the time accrued and payable on such shares shall be allocated pro rata among the Series A Holders and the Series B Holders with respect to dividends based on the amount of Preferred Stock Dividends due to each such holder. The Board may fix a record date for the determination of holders of Preferred Shares entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

## **2. Voting Rights**

A. Except as provided by applicable law or as provided herein, the Series A Preferred Stock, the Series B Preferred Stock and any other class of stock of the Corporation having voting rights shall vote together as one class. On all matters that do not require the Preferred Holders to vote as a single class, each Preferred Holder will be entitled to the number of votes that such Preferred Holder would have if such Preferred Holder were to convert such Preferred Holder's Preferred Shares immediately prior to the applicable vote. Fractional votes will not be permitted and any resulting fractional voting rights (after determining the total number of votes such Preferred Holder is entitled to if such Preferred Holder had converted all of such Preferred Holder's Preferred Shares) will be rounded to the nearest whole number (with one-half being rounded upward).

B. The Preferred Holders are entitled to receive notice of all meetings of the stockholders of the Corporation to the same extent and in the same manner as the holders of the common stock of the Corporation ("Common Stock").

C. The Board will consist of nine members.

## **3. Certain Restrictions**



A. So long as Preferred Shares are outstanding, the Corporation may not take any of the following actions without first obtaining the consent of the holders of 66 2/3% of the Preferred Shares:

i. alter the terms or rights of the Series A Preferred Stock or the Series B Preferred Stock or any agreement affecting the rights of the Series A Holders or Series B Holders;

ii. issue any new equity securities (other than pursuant to employee incentive plans previously approved by the Board); provided, however, that the Corporation may engage in a Qualified Initial Public Offering without the consent of any Preferred Holders, subject to the terms hereof. A "Qualified Initial Public Offering" is an initial public offering of Common Stock that (a) if effected before April 12, 2000, will result in net proceeds to the Corporation of at least \$20 million and is led by a Qualified Underwriter or (b) if effected after April 12, 2000 but before April 12, 2005, is led by underwriters that in good faith have established a price range for a share of Common Stock that is reflected in the Corporation's first registration statement filing with the Securities and Exchange Commission showing the price range for a share of Common Stock and that allows the Preferred Holders to earn the Requisite Internal Rate of Return if the low end of such price range (the "Low Price") is used to determine the Liquidation Proceeds. The Corporation may not execute an underwriting agreement for an offering pursuant to clause (b) above that contains an initial public offering price that is below 80% of the Low Price without the consent of 66 2/3% of the Preferred Holders. A "Qualified Underwriter" is any of the following: Lehman Brothers, Goldman Sachs & Co., Donaldson, Lufkin & Jenrette Securities Corporation, Bear, Stearns & Co. Inc., NationsBanc Montgomery Securities LLC, Hambrecht & Quist, BT Alex. Brown, Allen & Co., BancBoston Robertson Stephens, J.P. Morgan & Co., Merrill Lynch & Co., Morgan Stanley Dean Witter, CIBC Oppenheimer Corp., CitiGroup (Salomon Brothers), Credit Suisse First Boston or any other underwriter approved by 66 2/3% of the Preferred Holders.

iii. merge, consolidate, or sell all or substantially all of the assets of the Corporation provided, however, a transaction whereby the holders of all Preferred Shares receive at least their Liquidation Preference (as defined below) shall require approval by only a majority of the Preferred Holders;

iv. amend the Corporation's Articles or By-laws;

v. amend the budget for such quarter previously approved by the Board;

vi. enter into any business outside of the Core Business or otherwise expend any material amount of time, effort, or funds in connection therewith. "Core Business" means providing voice, data, or video services reasonably comparable to services provided in California or Nevada by the Corporation's primary competitors and excludes paging, cell phone resales, and company-owned pay phones;

vii. declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock or Series B Preferred Stock;

viii. declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock or Series B Preferred Stock, except dividends paid ratably on the Series A Preferred Stock, the Series B Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

ix. redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock or Series B Preferred Stock; provided, however, that the Corporation may at any time (a) redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock and Series B Preferred Stock or (b) subject to approval by the Board, repurchase from employees of the Corporation shares of Common Stock pursuant to the terms of restricted stock, stock option or employment agreements upon termination of their employment with the Corporation; or

x. redeem or purchase or otherwise acquire for consideration any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock or Series B Preferred Stock, except redemptions made ratably of the Series A Preferred Stock, the Series B Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are then entitled.

B. The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Section C.3.A., purchase or otherwise acquire such shares at such time and in such manner.

C. So long as Preferred Shares are outstanding, the Corporation may not take any of the following actions without first delivering 72 hours prior written notice to the Preferred Holders and obtaining Board approval:

i.. incur cumulative indebtedness over \$500,000;

ii. sell any asset or group of related assets outside the ordinary course of business in excess of \$250,000 in one or a series of transactions;

iii. enter into any transactions with an Affiliate (as defined below); provided, that the Corporation may enter into the Reciprocal Telecommunications Services Agreement,

dated on or about April 14, 1999, with Justice Technology Corporation, a California corporation; and provided, further, that the Corporation may enter into transactions with Affiliates so long as such transactions cumulatively since April 14, 1999 do not involve amounts in excess of \$50,000, excluding for such purposes any transactions entered into pursuant to the immediately preceding proviso. "Affiliate" means any entity or individual directly or indirectly controlling or controlled by the Corporation or under direct or indirect common control with the Corporation (other than wholly-owned subsidiaries of the Corporation); or

- iv. adopt or materially change its annual business plan or budget.

#### 4. Liquidation, Dissolution or Winding-Up

A. In the event of the liquidation, dissolution, winding-up, sale or other disposition of all or substantially all of the assets of the Corporation, whether voluntary or involuntary, a merger in which the Corporation is not the surviving corporation, or a merger in which the Corporation is the surviving corporation and after which the security holders of the Corporation prior to such merger fail to control more than 50% of the voting power of the Corporation after such merger ("Liquidation"), the holders of 66 2/3% of the Preferred Shares will have the option (exercisable in accordance with Section C.4.B.) to cause the Corporation to redeem the outstanding Preferred Shares, after payment of or provision for payment of the debts and other liabilities of the Corporation, for cash or any other assets of the Corporation in an amount (or having a fair market value) equal to \$100,000 per share (or such lesser Funded Portion) plus all accrued but unpaid Preferred Stock Dividends up to and including the date of Liquidation (the "Liquidation Preference"); provided, however, a transaction whereby the holders of all Preferred Shares receive at least their Liquidation Preference shall require approval by only a majority of the Preferred Holders and; provided, further however, that non-cash consideration shall be payable only with the prior written consent of the holders of 66 2/3% of the Preferred Shares. Subject to the preceding proviso, the fair market value of any assets of the Corporation and the proportion of cash and other assets distributed by the Corporation to the holders of Preferred Shares shall be reasonably determined in good faith by the Board. If there are insufficient funds to pay the Liquidation Preference, payment will be allocated pro rata among the Preferred Holders based on the amount such Preferred Holder has a right to receive.

B. The Corporation will deliver to the Preferred Holders prompt notice of any Liquidation. For the 30-day period after the Preferred Holders receive such notice, the holders of 66 2/3% of the Preferred Shares will have the option to cause the Corporation to redeem the outstanding Preferred Shares for the Liquidation Preference by delivering written notice to the Corporation of the Preferred Holders' election to cause the redemption of such shares.

#### 5. Conversion Rights

A. Right to Convert. Each Preferred Share shall be convertible at the option of any holder thereof at any time and from time to time from and after the date of issuance of such

Preferred Share. Upon conversion, each Preferred Share shall be convertible into the number of the Corporation's fully paid and nonassessable shares of Common Stock determined by dividing \$100,000 (or such lesser Funded Portion) by the Conversion Price applicable to such share, determined as herein provided, in effect on the date that the certificate is surrendered for conversion. If less than all of the Preferred Shares held by a Preferred Holder are to be converted, the Preferred Holder shall specify at the time of surrender of his or her Preferred Shares for conversion, the exact number to be converted.

B. Conversion Price. The "Conversion Price" for each Preferred Share shall initially be \$3.50 (the "Initial Conversion Price") and shall be subject to adjustments as provided herein. The Corporation must provide each Preferred Holder with a detailed computation of each adjustment to the Conversion Price made pursuant to Sections C.5.C., C.5.D., and C.5.E., including any recomputations pursuant to the last sentence of Section C.5.D.

C. Adjustments to Conversion Price on Stock Dividend, Stock Split, etc. The number of shares of Common Stock into which each Preferred Share may be converted shall be subject to adjustment in the event the Corporation shall at any time (i) establish a record date for the purpose of declaring any dividend on the Common Stock payable in shares of Common Stock, (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) increase or decrease the number of shares of Common Stock by reclassification. In such event, the number of shares of Common Stock to be received upon conversion shall be adjusted so that each Preferred Holder shall thereafter be entitled to receive for such Preferred Share the number of shares of Common Stock which such Preferred Holder would have owned and/or been entitled to receive upon the occurrence of an event or record date described above had the Preferred Share been converted immediately prior to the happening of the event or record date. The Conversion Price will be adjusted by dividing the Liquidation Value by such adjusted number of shares of Common Stock. Any such adjustment shall become effective immediately after the record date of such dividend or the effective date of such reclassification, subdivision, combination, or consolidation.

D. IRR Adjustment to Initial Conversion Price. Upon the occurrence of an IRR Event, the Initial Conversion Price of a series of Preferred Shares will be decreased to the highest price that allows the relevant series of Preferred Holders to earn the Requisite Internal Rate of Return (as defined below); provided, that the Initial Conversion Price may not be decreased below \$2.50. The Internal Rate of Return on each applicable series of Preferred Shares will be determined upon any event described in clause (i), (ii) or (iii) below. An "IRR Event" will occur: (i) with respect to all of the outstanding Preferred Shares, upon an initial public offering of Common Stock, a merger, or a sale of all or substantially all of the Corporation's assets, (ii) with respect to the Series A Preferred Stock, upon a sale of Rader Reinfrank Holdings No. 3 and its designees' ("RRCO") entire equity stake in the Corporation, or (iii) with respect to the Series B Preferred Stock, upon a sale of GE Capital Equity Investments, Inc. or its designees' ("GE Equity") entire equity stake in the Corporation (each, a "Trigger Event"), but only if the holders

of the applicable series of outstanding Preferred Shares fail to earn the Requisite Internal Rate of Return (as determined in accordance with Section C.5.D.v.) and only with respect to such series of outstanding Preferred Stock which shall fail to earn the Requisite Internal Rate of Return. If the Initial Conversion Price of a series is adjusted pursuant to this Section C.5.D., each adjustment to the Conversion Price of a series pursuant to Sections C.5.C. and C.5.E. will be recomputed using the Initial Conversion Price of such series as so adjusted, but in no event will the Conversion Price of such series be increased. For purposes hereof, a sale by RRCO or GE Equity will not be a Trigger Event unless such sale is made to an unaffiliated third party.

i. A Trigger Event will be deemed to occur on the date that (a) in the case of an initial public offering, the Corporation first files a registration statement for such offering, (b) in the case of a merger or sale by the Corporation, the Corporation executes a merger agreement or purchase agreement, as applicable, or (c) in the case of a sale by RRCO, as applied to the Series A Preferred Stock, or a sale by GE Equity, as applied to the Series B Preferred Stock, RRCO or GE Equity, as the case may be, executes a merger agreement or purchase agreement, as applicable. If a Trigger Event that gives rise to an adjustment is not consummated by the Corporation, RRCO, or GE Equity, as the case may be, any adjustments to the Initial Conversion Price on account of such a Trigger Event will be nullified, and the Initial Conversion Price will remain subject to adjustment upon a subsequent IRR Event.

ii. Any adjustments pursuant to this Section C.5.D. will be determined on the date that the Internal Rate of Return on each applicable Preferred Share is determined in accordance with Section C.5.D.iv. and shall be confirmed within three business days by delivery to the applicable Preferred Holders of a certificate from the Corporation's principal financial officer setting forth the average Internal Rate of Return for the applicable series of Preferred Shares, including supporting calculations. Upon the request of the holders of a majority of the applicable series of Preferred Shares, such financial information will be subject to review by the Corporation's independent auditors.

iii. The "Internal Rate of Return" on a Preferred Share means the lowest annual rate, which, when used to discount each cash flow on the Preferred Share to the closing date with respect to such Preferred Share (including draws, paid Preferred Stock Dividends and Liquidation Proceeds, but excluding any structuring fees or management fees that may be payable to certain Preferred Holders) makes the sum of such discounted cash flows equal to \$0. For the purposes of this definition, "Liquidation Proceeds" means (a) in the event of an initial public offering, the value of the shares issued upon conversion of the Preferred Shares priced at the Low Price, (b) in the event of a merger or sale of all or substantially all of the Corporation's assets, the fair market value of the per share consideration to be received as of the date of the merger or sale, (c) (i) as calculated with respect to the Series A Preferred Stock, in the event of a sale of RRCO's entire equity stake, the greater of (w) 80% of the fair market value of the shares sold by RRCO and (x) the consideration received by RRCO, or (ii) as calculated with respect to the Series B Preferred Stock, in the event of a sale of GE Equity's entire equity stake, the greater of (w) 80% of the fair market value of the shares sold by GE Equity and (x) the consideration

received by GE Equity. The fair market value of publicly traded shares received as consideration for a merger, sale of the Corporation's assets, sale of RRCO's equity stake, or sale of GE Equity's equity stake will be determined based on the average closing price of the shares to be received over the 20 trading days preceding the date that the merger price or sale price of the assets is determined by the Board or the effective date of the sale of shares, as the case may be. The fair market value of all other forms of consideration will be determined in good faith by the Board. The Internal Rate of Return on each Preferred Share will be computed as if the Liquidation Proceeds are received on (y) in the case of an initial public offering, the date 90 days after the Corporation first files a registration statement for such offering with the SEC, or (z) in the case of a merger or sale, the date 60 days after the date that the Corporation, RRCO or GE Equity, as the case may be, executes a merger agreement or purchase agreement, as applicable.

iv. The date for determining the Internal Rate of Return will be (a) for an initial public offering, the date that the Low Price is established, (b) for a merger, the date that the merger price is determined by the Board, (c) for a sale of RRCO's equity stake, the date that the sale price is determined, (d) for a sale of GE Equity's equity stake, the date that the sale price is determined, and (e) for a sale of all or substantially all of the Corporation's assets, the date that the purchase price is determined by the Board.

v. The Requisite Internal Rate of Return applicable to a Trigger Event will be the percentage set forth below opposite the applicable 12-month period. To determine whether a series of Preferred Holders have earned the Requisite Internal Rate of Return, an average of the Internal Rate of Return for each outstanding series of Preferred Shares will be computed and used for such purpose.

The Trigger Event occurs within the  
corresponding 12 month period, with the  
first period commencing on July 2, 1999  
and concluding on July 1, 2000:

Requisite Internal Rate of Return on each  
series of Preferred Shares:

|        |      |
|--------|------|
| First  | 150% |
| Second | 100% |
| Third  | 75%  |
| Fourth | 50%  |
| Fifth  | 45%  |
| Sixth  | 40%  |

E. Adjustments to Conversion Price for Certain Diluting Issuances.

i. Definitions.

a. "Additional Shares of Common Stock" shall mean all shares of Common Stock or common stock equivalents issued (or, pursuant to Section C.5.E.iii., deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(1) upon conversion of shares of Preferred Stock;

(2) as a dividend or distribution on Preferred Stock;

(3) upon exercise or conversion of Options or Convertible Securities outstanding on the Original Issue Date or up to 1,000,000 shares issuable pursuant to Options or Convertible Securities granted pursuant to employee benefit plans approved by the Board after the date hereof; or

(4) for which adjustment of the Conversion Price is made pursuant to Section C.5.C or C.5.D.

b. "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

c. "Options" shall mean rights, options, or warrants to subscribe for, purchase or otherwise acquire Common Stock, Preferred Stock, or Convertible Securities or the right to acquire options or warrants for any of the foregoing.

d. "Original Issue Date" shall mean the date on which the Corporation first issued a share of Series B Preferred Stock.

ii. Adjustment only if Consideration is Less than Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section C.5.E.v. hereof) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issuance.

iii. Deemed Issuance of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date issues any Options or Convertible Securities or fixes a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum

number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options for Convertible Securities, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issuance or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which Additional Shares of Common Stock are deemed to be issued:

a. no further adjustments in the Conversion Price shall be made upon the subsequent issuance of such Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

b. if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Option or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Conversion Price shall affect Common Stock previously issued upon conversion of the Preferred Stock);

c. upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities that have not been exercised, the Conversion Price computed upon the original issuance thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(1) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration that the Corporation actually received for the issuance of all such Options, whether or not exercised, plus the consideration that the Corporation actually received upon such exercise, or for the issuance of all such Convertible Securities which were actually converted or exchanged; and

(2) in the case of Options for Convertible Securities, only the Convertible Securities actually issued upon the exercise thereof were issued at the time of issuance of such Options, and the consideration that the Corporation received for the Additional Shares of Common Stock deemed to have been then issued was the consideration that the Corporation actually received for the issuance of all such Options, whether or not exercised, plus



the consideration that the Corporation is deemed to have received (as determined under Section C.5.E.v.) upon the issuance of the Convertible Securities or with respect to which such Options were actually received; and

(3) in the case of any Options which expire by their terms not more than 30 days after the date of issuance thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options.

iv. Adjustments to Conversion Price: If the Corporation, at any time after the Original Issue Date, issues Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section C.5.E.iii.) without consideration or for a consideration per share less than the Conversion Price in effect on the date of and immediately prior to such issue, then and in such event, the Conversion Price will be reduced, concurrently with such issue, to the price per share of the Additional Shares of Common Stock.

v. Determination of Consideration. For the purposes of Section C.5.E., the consideration that the Corporation receives for the issuance of any Additional Shares of Common Stock shall be computed as follows:

a. Cash and Property. Except as modified by Section C.5.E.v.b. with respect to Options and Convertible Securities, such consideration will:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash that the Corporation received, excluding amounts paid or payable for accrued interest or accrued dividends;

(2) insofar as it consists of publicly traded securities, be computed based upon the average closing price of such securities for the twenty consecutive trading days preceding the day on which the Corporation receives such consideration;

(3) insofar as it consists of property other than cash or publicly traded securities, be computed at the fair market value thereof at the time of such issuance, as determined in good faith by the Board; and

(4) in the event that Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in the preceding clauses, as determined in good faith by the Board.

b. Options and Convertible Securities. The consideration per share ("CPS") that the Corporation receives for Additional Shares of Common Stock deemed to have been issued pursuant to Section C.5.E.iii., relating to Options and Convertible Securities shall be determined by the following equation:

$$\text{CPS} = \frac{\text{TCR} + \text{MAC}}{\text{MNS}}$$

where:

"TCR" = the total amount, if any, that the Corporation receives or received as consideration for the issuance of such Options or Convertible Securities;

"MAC" = the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities; and

"MNS" = the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against the dilution) issuable upon the exercise of such Options or conversion or exchange of such Convertible Securities.

F. Conversion Method. Before a Preferred Holder is entitled to convert the same into shares of Common Stock, such Preferred Holder shall surrender the certificate or certificates therefor, duly endorsed in blank, at the office of the transfer agent for the Corporation's Common Stock and shall give written notice by mail, postage prepaid, to the Corporation at its executive corporate office, of the election to convert the same. The certificate or certificates for shares of Common Stock shall be issued only in the name of the person surrendering the certificate or certificates of Preferred Stock. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such Preferred Holder, or to the nominee or nominees of such Preferred Holder, (i) a certificate or certificates for the number of shares of Common Stock to which such Preferred Holder shall be entitled as aforesaid and (ii) a new certificate for any remaining Preferred Shares evidenced by a surrendered certificate but not converted. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and such Preferred Holder shall be treated for all purposes as the record holder of such shares of Common Stock as of such date. If there are Preferred Stock Dividends accrued but not paid up to the date of conversion, the Corporation shall pay such Preferred Holder such Preferred Stock Dividends in cash, subject to the Corporation's right under Section C.I.C., on the date of the conversion; subject to any restrictions applicable under state law in the state of the Corporation's incorporation and to the provisions of any contract or agreement, including, but not limited to any loan agreement, to which the Corporation is a party; provided, however, that if the Corporation shall be unable to pay any such Preferred Stock Dividends as a result of such restrictions, the Preferred Holder, upon written notice to the Corporation given within thirty (30) days following the date of conversion, shall be entitled to convert all, but not less than all, of such accrued but unpaid

Preferred Stock Dividends into such whole number of additional shares of Common Stock determined by dividing (x) the amount of such accrued but unpaid Preferred Stock Dividends by (y) the Conversion Price then in effect.

G. Fractional Shares of Common Stock. No fractional shares of Common Stock or scrip shall be issued upon conversion of Preferred Stock. Instead of any fractional shares of Common Stock which otherwise would be issuable upon conversion of any Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest based upon the fair market value (if Common Stock is publicly traded on a national exchange, based on the closing price for a share of Common Stock on such exchange on the date of conversion and if not publicly traded, as determined in good faith by the Board) of a share of Common Stock.

H. Taxes. All shares of Common Stock issued upon conversion of Preferred Stock will be validly issued, fully paid and nonassessable. The Corporation shall pay any and all documentary stamp or similar issuance or transfer taxes that may be payable in respect of any issuance or delivery of shares of Common Stock on conversion of Preferred Stock pursuant hereto.

I. Surrendered Preferred Stock. All certificates representing Preferred Stock surrendered for conversion or redemption shall be appropriately canceled on the books of the Corporation and the Preferred Stock so converted or redeemed represented by such certificates shall be restored to the status of authorized but unissued Preferred Stock.

J. Available Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect a conversion of all outstanding Preferred Stock under Section C.5.A., and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding Preferred Stock, the Corporation shall promptly take such corporate action as may, in the opinion of its counsel and subject to any necessary approval of its stockholders, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

## 6. Mandatory Redemption

On April 12, 2005 (the "Redemption Date"), out of funds of the Corporation legally available therefor, the Corporation must redeem each Preferred Share for a cash amount equal to the Liquidation Preference of such share.

A. Notice of Redemption. Notice of redemption of Preferred Shares shall be mailed by first class mail, postage prepaid, addressed to the Preferred Holders at each Preferred Holder's address as it appears on the books of the Corporation and shall set forth the place at which such

Preferred Holder may obtain payment and surrender such Preferred Holder's certificates representing the Preferred Shares redeemed. Such mailing must be given at least 30 days prior to the Redemption Date. Any notice which is mailed in the manner herein provided for shall be conclusively presumed to have been duly given, whether or not the Preferred Holders receive such notice.

B. Rights upon Redemption. If notice of redemption is duly given, and if, on or before the Redemption Date, all funds necessary for such redemption are set aside by the Corporation, separate and apart from its other funds, in trust for the benefit of the Preferred Holders, so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares so called for redemption are not surrendered for cancellation, all shares so called for redemption will no longer be deemed outstanding on and after such Redemption Date, and all rights with respect to such shares shall forthwith on such Redemption Date cease and terminate, except only the right of the Preferred Holders to receive the amount payable on redemption thereof, without interest. If there are insufficient legally available funds to redeem all the Preferred Shares, payment will be allocated pro rata among the Preferred Holders based on the amount such Preferred Holder has a right to receive. Any funds so set aside by the Corporation and unclaimed by the second anniversary of the Redemption Date shall revert to the general funds of the Corporation.

C. No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and such shares shall be canceled, retired and eliminated from the shares which the Company shall be authorized to issue.

7. Consolidation, Merger, etc.

If the Corporation enters into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, if the Preferred Shares are not redeemed pursuant to Section C.6, then in any such case the Preferred Stock will be convertible into the same kind and amounts of stock, securities, cash and/or any other property (payable in kind), as the case may be, which were issuable or distributable upon such event to holders of the number of shares of Common Stock into which the Preferred Stock might have been converted immediately prior to such event. Other than as set forth in the preceding sentence, the Preferred Stock will continue to be outstanding on the same terms and conditions as set forth herein, except that if the Corporation does not exist after such event, the successor corporation will issue to the Preferred Holders securities with the same rights, preferences and privileges as the Preferred Stock with the same amount of accrued and unpaid dividends owing to each Preferred Holder on such securities as is owed to such Preferred Holder on such Preferred Holder's Preferred Shares.

8. Preemptive Rights

The Preferred Holders have the right to purchase from the Corporation their pro rata share (based on their beneficial ownership of Common Stock) of any new issues of equity or equity-linked securities or Convertible Securities on the same terms and conditions as are available to other investors. The Corporation must give notice of any such new issues, including the material terms thereof, to the Preferred Holders, and each Preferred Holder will have 20 days from the date such notice is delivered to such Preferred Holder to elect to exercise such Preferred Holder's rights under this provision. This provision does not apply to issues of equity or equity-linked securities or Convertible Securities pursuant to employee incentive plans previously approved by the Board.

9. Rank

The Series A Preferred Stock and the Series B Preferred Stock shall rank pari passu in all respects including, without limitation, as to dividends or upon liquidation, dissolution or winding up. The Preferred Stock shall rank (i) senior to all Common Stock of the Corporation and (ii) senior to any other equity securities of the Corporation that by their terms are not made senior to or on a parity with the Preferred Stock. The Corporation shall not issue equity securities that by their terms are made senior, either as to dividends or upon Liquidation, to the Series A Preferred Stock or the Series B Preferred Stock without the prior written consent of the holders of 66 2/3% of the Preferred Shares.

ARTICLE IV.

The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

ARTICLE V.


The Corporation is authorized to indemnify the directors, officers, employees and agents of the Corporation to the fullest extent permissible under California law.

1 The foregoing Amendment and Restatement of the Articles of Incorporation has been duly approved by the Board of Directors.

2 The foregoing Amendment and Restatement of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of the Common Stock of the Corporation is 10,722,622. The total number of outstanding shares of Series A Convertible Preferred Stock of the Corporation is 150. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than 50% of the outstanding shares of the Series A Convertible Preferred Stock, each voting as a separate class. The number of shares voting in favor of the amendment equaled or exceeded the vote required.

I further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of my own knowledge.

Date: November 9, 1999

  
\_\_\_\_\_  
David P. Glickman, Chief Executive Officer

Date: November 9, 1999

  
\_\_\_\_\_  
Kirstin Gooldy, Assistant Secretary



1974331

FILED 8

in the office of the Secretary of State  
of the State of California

JUL 17 1956

Bill Jones  
S. JONES, Secretary of State

## ARTICLES OF INCORPORATION

OF

Justice Long Distance Corp.

I

The name of this corporation is Justice Long Distance Corp.

II

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Lillian Su  
202-B Illinois St.  
El Segundo, CA 92045

IV

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is 100,000,000.

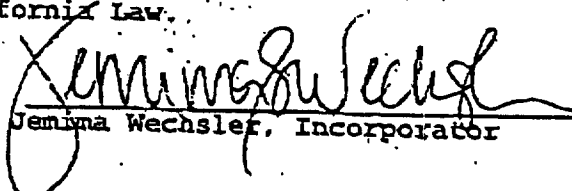
V

The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VI

The corporation is authorized to indemnify the directors and officers of the corporation to the fullest extent permissible under California law.

Dated: 7/17

  
Jemima Wechsler, Incorporator

**BYLAWS FOR THE REGULATION  
OF  
U.S. TELEPACIFIC CORP.  
A CALIFORNIA CORPORATION**

**ADOPTED: APRIL 14, 1999**

**AMENDED: NOVEMBER 9, 1999**



**BYLAWS FOR THE REGULATION  
OF  
U.S. TELEPACIFIC CORP.  
a California corporation**

**ARTICLE I**

**Principal Executive Office**

The principal executive office of the corporation shall be 800 West Sixth Street, Suite 400, Los Angeles, California 90017.

**ARTICLE II**

**Meeting of Shareholders**

Section 2.01 Annual Meetings. The annual meeting of shareholders shall be held at such time and on such date as the board of directors shall determine. At each annual meeting, directors shall be elected and any other proper business may be transacted.

Section 2.02 Special Meetings. Special meetings of shareholders may be called by the board of directors, the chairman of the board (if there be such an officer), the president, or the holders of shares entitled to cast not less than ten percent (10%) of the votes at such meeting. Each special meeting shall be held at such date and time as is requested by the person or persons calling the meeting within the limits fixed by law.

Section 2.03 Place of Meetings. Each annual or special meeting of shareholders shall be held at such location as may be determined by the board of directors, or if no such determination is made, at such place as may be determined by the chief executive officer, or by any other officer authorized by the board of directors or the chief executive officer to make such determination. If no location is so determined, any annual or special meeting shall be held at the principal executive office of the corporation.

Section 2.04 Notice of Meetings. Notice of each annual or special meeting of shareholders shall contain such information, and shall be given to such persons at such

time, and in such manner, as the board of directors shall determine, or if no such determination is made, as the chief executive officer, or any other officer so authorized by the board of directors or the chief executive officer, shall determine, subject to the requirements of applicable law.

Section 2.05 Conduct of Meetings. Subject to the requirements of applicable law, all annual and special meetings of shareholders shall be conducted in accordance with such rules and procedures as the board of directors may determine and, as to matters not governed by such rules and procedures, as the chairman of such meeting shall determine. The chairman of any annual or special meeting of shareholders shall be designated by the board of directors and, in the absence of any such designation, shall be the chief executive officer of the corporation.

### ARTICLE III

#### Directors

Section 3.01 Number. The number of directors of the corporation shall be not less than five (5) nor more than nine (9), until changed in accordance with applicable law. The exact number of directors shall be fixed from time to time, within the limits specified, by resolution of the board of directors or the shareholders. Subject to the foregoing provisions for changing the exact number of directors, the number of directors of this corporation shall be nine (9).

Section 3.02 Meetings of the Board. Each regular and special meeting of the board shall be held at a location determined as follows: The board of directors may designate any place, within or without the State of California, for the holding of any meeting. If no such designation is made, (i) any meeting called by a majority of the directors shall be held at such location, within the county of the corporation's principal executive office, as the directors calling the meeting shall designate; and (ii) any other

meeting shall be held at such location, within the county of the corporation's principal executive office, as the chief executive officer may designate, or in the absence of such designation, at the corporation's principal executive office. Subject to Section 3.03 and the requirements of applicable law, all regular and special meetings of the board of directors shall be conducted in accordance with such rules and procedures as the board of directors may approve and, as to matters not governed by such rules and procedures, as the chairman of such meeting shall determine. The chairman of any regular or special meeting shall be designated by the directors and, in the absence of any such designation, shall be the chief executive officer of the corporation.

Members of the board of directors (or any committee appointed by the board) may participate in a meeting by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such meeting in such manner shall constitute presence in person at such meeting

Section 3.03 Quorum. A quorum for the conduct of business at any meeting shall be five (5) directors; provided, however, that no quorum shall exist unless three (3) RRCO Directors (as defined in the Shareholders' Agreement, dated as of April 14, 1999, as amended or restated from time to time) and two (2) Founder Directors (as defined in the Shareholders' Agreement, dated as of April 14, 1999, as amended or restated from time to time) are present.

#### ARTICLE IV

##### Indemnification of Directors,

##### Officers, and Other Corporate Agents

Section 4.01 Indemnification. This corporation shall indemnify and hold harmless any person who is or was a director or officer of this corporation, or is or was serving at the request of the Board of Directors of this Corporation as a director, officer,

employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise (an "Agent"), from and against any expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any "proceeding" (as defined in Section 317(a) of the California Corporations Code) to the fullest extent permitted by applicable law. The corporation shall advance to its directors, officers and Agents expenses incurred in defending any proceeding prior to the final disposition thereof to the fullest extent and in the manner permitted by applicable law.

Section 4.02 Right to Indemnification. This section shall create a right of indemnification for each person referred to in Section 4.01, whether or not the proceeding to which the indemnification relates arose in whole or in part prior to adoption of such section and in the event of death such right shall extend to such person's legal representatives. The right of indemnification hereby given shall not be exclusive of any other rights such person may have whether by law or under any agreement, insurance policy, vote of directors or shareholders, or otherwise.

Section 4.03 Insurance. The corporation shall have power to purchase and maintain insurance on behalf of any director, officer or Agent of the corporation against any liability asserted against or incurred by such persons in their capacity as a director, officer or Agent or arising out of such persons status as such whether or not the corporation would have the power to indemnify such persons against such liability.

## ARTICLE V

### Officers

Section 5.01 Officers. The corporation shall have a chief executive officer, a president, a chief financial officer, a secretary, and such other officers, including a chairman of the board, as may be designated by the board. Officers shall have such powers and duties as may be specified by, or in accordance with, resolutions of the board of directors. In the absence of any contrary determination by the board of directors, the chief

executive officer shall, subject to the power and authority of the board of directors, have general supervision, direction, and control of the officers, employees, business, and affairs of the corporation.

Section 5.02 Limited Authority of Officers. No officer of the corporation shall have any power or authority outside the normal day-to-day business of the corporation to bind the corporation by any contract or engagement or to pledge its credit or to render it liable in connection with any transaction unless so authorized by the board of directors.

## ARTICLE VI

### Waiver of Annual Reports

So long as the corporation has less than 100 holders of record of its shares (determined as provided in Section 605 of the California Corporations Code), no annual report to shareholders shall be required, and the requirement to the contrary of Section 1501 of the California Corporations Code is hereby expressly waived.

## ARTICLE VII

### Amendments

New bylaws may be adopted or these bylaws may be amended or repealed by the shareholders or, except for Section 3.01, by the directors.

**EXHIBIT "B"**  
**FOREIGN CORPORATION QUALIFICATION**

# Secretary of State

## Corporations Section

James K. Polk Building, Suite 1800

Memphis, Tennessee 37243-0306

DATE: 01/26/00

REQUEST NUMBER: 3800-2099

TELEPHONE CONTACT: (615) 741-2286

FILE DATE/TIME: 01/25/00 1025

EFFECTIVE DATE/TIME: 01/25/00 1025

CONTROL NUMBER: 0383553

TO:

CSC/USC

2730 GATEWAY OAKS DR

SUITE 100

SACRAMENTO, CA 95833

RE:

U.S. TELEPACIFIC CORP.

APPLICATION FOR CERTIFICATE OF AUTHORITY -  
FOR PROFIT

WELCOME TO THE STATE OF TENNESSEE. THE ATTACHED CERTIFICATE OF  
AUTHORITY HAS BEEN FILED WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

A CORPORATION ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE  
ON OR BEFORE THE FIRST DATE OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE  
CORPORATION'S FISCAL YEAR. PLEASE PROVIDE THIS OFFICE WITH WRITTEN  
NOTIFICATION OF THE CORPORATION'S FISCAL YEAR. THIS OFFICE WILL MAIL THE  
REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE CORPORATION AT THE  
ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS  
OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED  
AGENT AND OFFICE WILL SUBJECT THE CORPORATION TO ADMINISTRATIVE REVOCATION  
OF ITS CERTIFICATE OF AUTHORITY.

IN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR  
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

FOR: APPLICATION FOR CERTIFICATE OF AUTHORITY -  
FOR PROFIT

ON DATE: 01/25/00

FROM:

CSC/USC (2730 GATEWAY OAKS DR)

2730 GATEWAY OAKS DR

SUITE 100

SACRAMENTO, CA 95833-0000

RECEIVED: FEES \$600.00 \$0.00

TOTAL PAYMENT RECEIVED: \$600.00

RECEIPT NUMBER: 00002603823

ACCOUNT NUMBER: 00261527



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE



Department of State  
Corporations Section

18th Floor, James K. Polk Building  
Nashville, TN 37243-0306

APPLICATION FOR  
CERTIFICATE OF AUTHORITY  
(FOR PROFIT)

FILED

For Office Use Only

To the Secretary of State of the State of Tennessee:

Pursuant to the provisions of Section 48-25-103 of the Tennessee Business Corporation Act, the undersigned corporation hereby applies for a certificate of authority to transact business in the State of Tennessee, and for that purpose sets forth:

1. The name of the corporation is U.S. TELEPACIFIC CORP.

\*If different, the name under which the certificate of authority is to be obtained is \_\_\_\_\_

[NOTES: The Secretary of State of the State of Tennessee may not issue a certificate of authority to a foreign corporation for profit if its name does not comply with the requirements of Section 48-14-101 of the Tennessee Business Corporation Act. \*If obtaining a certificate of authority under a different corporate name, an application for registration of an assumed corporate name must be filed pursuant to Section 48-14-101(d) with an additional \$20.00 fee.]

2. The state or country under whose law it is incorporated is California

3. The date of its incorporation is 7/17/96 (must be month, day, and year), and the period of duration, if other than perpetual, is perpetual

4. The complete street address (including zip code) of its principal office is

515 S. Flower Street, 49th Floor, Los Angeles, CA 90071

Street City State/Country Zip Code

5. The complete street address (including the county and the zip code) of its registered office in Tennessee and the name of its registered agent is

500 Tallan 2 Union Square Chattanooga, TN 32402

Street City County Zip Code

Corporation Service Company  
Registered Agent

6. The names and complete business addresses (including zip code) of its current officers are: (Attach separate sheet if necessary.)

Please See Attached

7. The names and complete business addresses (including zip code) of its current board of directors are: (Attach separate sheet if necessary.)

Please See Attached

8. If the corporation commenced doing business in Tennessee prior to the approval of this application, the date of commencement (month, day and year) \_\_\_\_\_

9. The corporation is a corporation for profit.

10. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is

\_\_\_\_\_, \_\_\_\_\_ (date), \_\_\_\_\_ (time).

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

[NOTE: This application must be accompanied by a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.]

12.21.99  
Signature Date

Assistant Secretary  
Signer's Capacity

U.S. TELEPACIFIC CORP  
Name of Corporation

Kirstin Gooldy  
Signature

Kirstin Gooldy  
Name (typed or printed)



12-1-1313 12-1-1313

# State of California



RECEIVED  
STATE OF TENNESSEE  
JAN 25 AM 10:25  
RILEY DARNELL  
SECRETARY OF STATE

**SECRETARY OF STATE**

## CERTIFICATE OF STATUS DOMESTIC CORPORATION

I, **BILL JONES**, Secretary of State of the State of California, hereby certify:

That on the 17th day of July, 19 96,

U.S. TELEPACIFIC CORP.

became incorporated under the laws of the State of California by filing its Articles of Incorporation in this office; and

That no record exists in this office of a certificate of dissolution of said corporation nor of a court order declaring dissolution thereof, nor of a merger or consolidation which terminated its existence; and

That said corporation's corporate powers, rights and privileges are not suspended on the records of this office; and

That according to the records of this office, the said corporation is authorized to exercise all its corporate powers, rights and privileges and is in good legal standing in the State of California; and

That no information is available in this office on the financial condition, business activity or practices of this corporation.

IN WITNESS WHEREOF, I execute this  
certificate and affix the Great Seal of  
the State of California this day of

January 24, 2000.



*Bill Jones*

Secretary of State

FROM LATHAM & WATKINS SD 619-696-7419

(FRI) 3.17'00 10:52 A.T. 10:49/NO. 4861923201 P 8

**Secretary of State**

**Corporations Section**

**James K. Polk Building, Suite 1800**  
**Nashville, Tennessee 37243-0306**

DATE: 03/07/00  
REQUEST NUMBER: 3846-1633  
TELEPHONE CONTACT: (615) 741-2286  
FILE DATE/TIME: 03/07/00 1056  
EFFECTIVE DATE/TIME:  
CONTROL NUMBER: 0383553

TO:  
CSC USC  
2730 GATEWAY OAKS DR  
SUITE 100  
SACRAMENTO, CA 95833

RE:  
TELEPACIFIC COMMUNICATIONS  
APPLICATION FOR REGISTRATION OF ASSUMED CORPORATE  
NAME

THIS WILL ACKNOWLEDGE THE FILING OF THE ATTACHED ASSUMED NAME  
REGISTRATION FOR A FIVE YEAR PERIOD BEGINNING WITH AN EFFECTIVE DATE AS  
INDICATED ABOVE.

THE CORPORATION MAY RENEW THE RIGHT TO USE THIS NAME WITHIN TWO  
(2) MONTHS PRECEDING THE EXPIRATION OF SUCH RIGHT, FOR A PERIOD OF FIVE (5)  
YEARS, BY FILING AN APPLICATION WITH THE SECRETARY OF STATE.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR  
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

-----  
FOR: APPLICATION FOR REGISTRATION OF ASSUMED CORPORATE ON DATE: 03/07/00  
NAME

FROM:  
CSC/USC (2730 GATEWAY OAKS DR)  
2730 GATEWAY OAKS DR  
SUITE 100  
SACRAMENTO, CA 95833-0000

RECEIVED: FEES \$20.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$20.00  
RECEIPT NUMBER: 00002635486  
ACCOUNT NUMBER: 00261527



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

## APPLICATION FOR REGISTRATION OF ASSUMED CORPORATE NAME

Pursuant to the provisions of Section 48-14-101(d) of the Tennessee Business Corporation Act or Section 48-54-101(d) of the Tennessee Nonprofit Corporation Act, the undersigned corporation hereby submits this application:

1. The true name of the corporation is U.S. Telepacific Corp.

2. The state or country of incorporation is California

3. The corporation intends to transact business in Tennessee under an assumed corporate name.

4. The assumed corporate name the corporation proposes to use is

Telepacific Communications

(NOTE: The assumed corporate name must meet the requirements of Section 48-14-101 of the Tennessee Business Corporation Act or Section 48-54-101 of the Tennessee Nonprofit Corporation Act.)

2/18/2000  
Signature Date

Secretary  
Signer's Capacity

U.S. Telepacific Corp.  
Name of Corporation

[Signature]  
Signature

Kristin Booldy  
Name (typed or printed)



**EXHIBIT "C"**  
**FINANCIAL INFORMATION**

**EXHIBIT "D"**  
**BIOGRAPHY INFORMATION**



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Click photo  
to view individual profile.



David Glickman  
Chairman of the Board  
CEO



**David Glickman**  
Chairman of the Board and CEO

About TelePacific



Ken Blisnoff  
Vice President,  
Sales and Marketing



Phil Puccio  
Executive  
Vice President  
Of Operations



Michael Lee  
Chief Technology

**Mr. Glickman**, founder, Chairman and CEO of TelePacific Communications is also the founder and Chairman of Justice Technology Corporation, a full service international telecommunications company that was ranked the fastest growing private company by Inc. Magazine. Mr. Glickman spearheaded the revenue growth from \$200,000 in 1993 to nearly \$100 million in 1999. Prior to entering the telecommunications industry, Mr. Glickman headed Special Projects for American Express in Argentina, directed Corporate Finance at Ad Rendon and founded Oliver D. World Imports, Inc. Mr. Glickman was selected as a finalist for Ernst & Young's Entrepreneur of the Year for Southern California in 1997. He is the youngest board member of the world famous Los Angeles Philharmonic, serves on the board of the Hollywood Bowl and was founder and Chairman of the Board of the California Association of Entrepreneurs. He was selected as Philanthropist of the Year by CARE International in 1997. Mr. Glickman earned his Bachelor of Science degree from the Wharton School of Business at the University of Pennsylvania and a Master of Arts degree in Psychology at the University of California, Los Angeles.



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CALIFORNIA GOVERNOR PETE WILSON APPOINTED TO TELEPACIFIC BC

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to view individual profile.



David Glickman  
Chairman of the Board  
CEO



Ken Bisnoff  
Vice President,  
Sales and Marketing



Phil Puccio  
Executive  
Vice President  
of Operations



Michael Lee  
Chief Technology  
Officer



## Ken Bisnoff

Vice President  
Sales and Marketing

**Mr. Bisnoff** has more than a decade of sales performance in the telecommunications industry. Prior to joining TelePacific, Mr. Bisnoff was Vice President of Carrier Sales for CallManage Inc., a developer of least call routing technologies for small to medium sized businesses. Previously, Mr. Bisnoff was a Senior National Account Manager with WinStar, a wireless facilities-based CLEC offering local voice and data. As one of WinStar's early employees, Mr. Bisnoff helped develop the companies' operational and marketing standards utilizing his knowledge of CLEC products, sales and engineering. From 1993 to 1995, Mr. Bisnoff was a Senior Account Executive with TCG-New York, where he sold competitive local voice and data services to a broad spectrum of business customers. Mr. Bisnoff began his telecommunications sales career with AT&T, where he rose from a Systems Consultant to National Account Manager. Mr. Bisnoff earned a Bachelor of Science Degree in Electrical Engineering from the University of Massachusetts-Amherst.

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to view individual profile.



David Glickman  
Chairman of the Board  
CEO



Ken Bisnoff  
Vice President,  
Sales and Marketing



Phil Puccio  
Executive  
Vice President  
Of Operations



Michael Lee  
Chief Technology



**Philip Puccio**  
Executive Vice President

About TelePacific

**Mr. Puccio**, Executive Vice President, has 19 years of operations and engineering experience in the telecommunications and broadcast industries. Prior to joining TelePacific, Mr. Puccio spent 12 years at TCG and was Regional Vice President for TCG's Southwest market, which included Dallas, Houston, Kansas City and St. Louis. Mr. Puccio had P&L responsibility for the region along with operational responsibility for switch voice, data, private line and infrastructure activities. This included daily installation, maintenance and provisioning of these services. Mr. Puccio's prior positions at TCG included Director of Operations and Engineering for Dallas and Field Service Supervisor in TCG New York for voice data and satellite operations. Mr. Puccio earned a Bachelor of Science Degree in Financial Management from Dominican College. Mr. Puccio's team was responsible for firing up TelePacific's Los Angeles Lucent 5ESS switch in record time. The industry's most sophisticated switch was up and running in just four months.





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CALIFORNIA GOVERNOR PETE WILSON APPOINTED TO TELEPACIFIC BC

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to view individual profile.



David Glickman  
Chairman of the Board  
CEO



Ken Blisnoff  
Vice President,  
Sales and Marketing



Phil Puccio  
Executive  
Vice President  
Of Operations



Michael Lee  
Chief Technology  
Officer



**Michael Lee**  
Chief Technology Officer

About TelePacific

**Mr. Lee** has more than 10 years of experience in the high technology and Internet industries. Prior to joining TelePacific, Mr. Lee founded DigitalVelocity™, a Los Angeles-based Internet Service Provider that provides superior connectivity to multiple backbone carriers. Mr. Lee developed network methodology, marketing, and operational plans, and assembled a technical and management team to fully develop and deploy the service. DigitalVelocity™ was successfully launched in Los Angeles in 1998 and was acquired by TelePacific in April 1999. Mr. Lee previously served as National Director of Internet Sales for TCG Corporation and with CERFnet, one of the original commercial ISP's. As National Sales and Marketing Director for the Advanced Technology Operation (ATO) of Canon Computer Systems Inc., Mr. Lee was instrumental in developing and marketing one of the first Internet hosting and HTML content development hardware systems, the ObjectStation. Mr. Lee managed large-scale deployment of ObjectStations for several Fortune 1000 corporations. Mr. Lee earned a Bachelor of Science Degree in Systems Engineering from the University of Arizona.

**Lucas Pettorini, Vice President of Operations & Engineering**

Mr. Pettorini has more than 8 years of telecommunications experience and is one of the original members to the TelePacific team. Since joining TelePacific, Mr. Pettorini's responsibilities have included the implementation and maintenance of TelePacific's operational infrastructure, which encompasses Network and Switch Operations, Engineering and Planning, Service Delivery, New City Development, and the Network Operations Center. Prior to joining TelePacific, Mr. Pettorini was the Engineering Manager for ICG Telecom in San Diego where he oversaw the engineering and implementation of their ISP and OSP infrastructure, central office planning, and was also accountable for the markets capital budget. Prior to ICG, Mr. Pettorini was the Project Manager for TCG San Francisco where he was responsible for network construction and maintenance of the Northern California Market. Mr. Pettorini started his career in the telecommunications construction arena designing and constructing networks for numerous telecommunication providers. Mr. Pettorini earned a Bachelor of Arts Degree in Communications from California State University of Los Angeles.

**Cleata Zelenka, Executive Director of Switch Operations and Engineering**

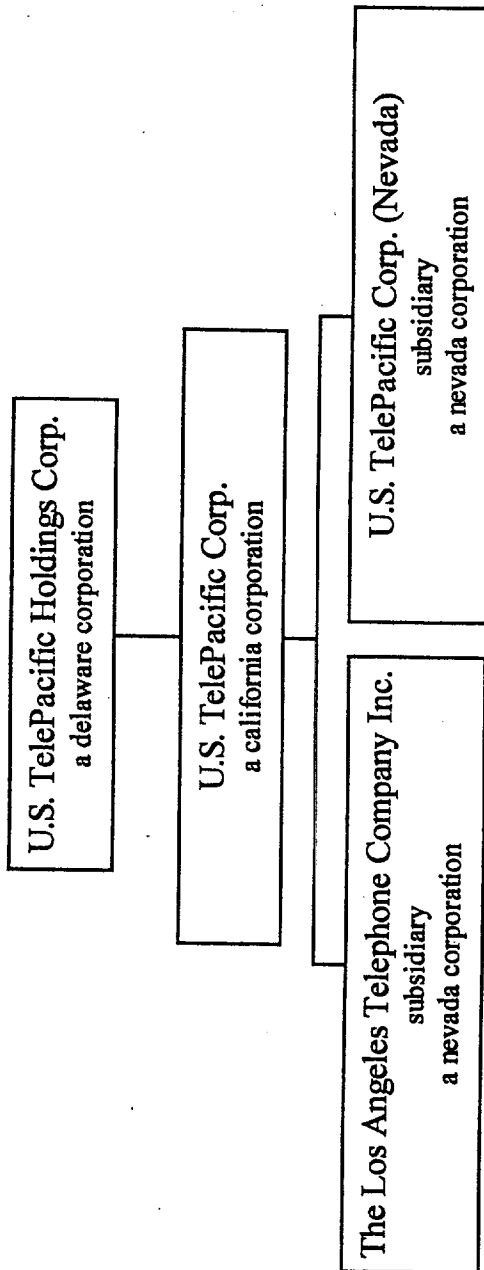
Ms. Zelenka has over 24 years of experience in the telecommunications industry and possesses extensive operational and engineering knowledge of telephony. Most recently Ms. Zelenka spent four years with TCG as Manager of Switch Engineering in TCG's Western Market, where she was responsible for the design and implementation of all Lucent 5ESS switched network elements. Ms. Zelenka's territory included the cities of Seattle, Portland, San Francisco, Oakland, Sacramento, Los Angeles and San Diego where she was the prime interface between TCG, PacBell, GTE and U S WEST for all matters concerning network trunking and E911 services. Prior to joining TCG, Ms. Zelenka spent 12 years with Mountain Bell Communications, Inc. ("Mountain Bell") and over nine years with U S WEST, Inc. ("U S WEST"). While with Mountain Bell, Ms. Zelenka supervised network engineering groups that were responsible for central office switched trunking throughout Colorado and Wyoming. At U S WEST Ms. Zelenka participated in multiple central office conversions from analog switches to Lucent 5ESS switches and designed and implemented many remote switch sites. Ms. Zelenka earned a Bachelors of Science Degree from the University of Wyoming.

**Lee Tracy, Senior Translation Engineer**

Mr. Tracy has more than 34 years of telephone switching systems experience. Mr. Tracy joined TelePacific from TCG-Los Angeles, where as a Senior Translations Specialist he was responsible for routing, switch upgrades, maintenance and customer translations. Mr. Tracy has over 500 hours of formal classroom training on the Lucent 5ESS switch, over 300 hours on the Nortel DMS-100 switch and over 250 hours of training in network facility related courses. Mr. Tracy's expertise extends to switch turn-ups, software retrofits, engineering and implementation of ISDN, call routing as well as switched lineside and trunkside translations. Mr. Tracy began his career at Ohio Bell in 1964 as a switching technician and moved to PacBell in 1976.

**EXHIBIT "E"**  
**CORPORATE ORGANIZATION CHART**

## CORPORATE STRUCTURE DIAGRAM



**EXHIBIT “F”**  
**INTRALATA PRESUBSCRIPTION IMPLEMENTATION PLAN**

**US TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS (TelePacific)**  
**IntraLATA Presubscription Implementation Plan**

I. Purpose

The intent of this Plan is to provide a proposal that, upon implementation, would provide customers the ability to select the telecommunications carrier of their choice for routing their intraLATA toll calls.

II. Carrier Selection Procedures

TelePacific will implement the full 2-PIC (Primary Interexchange Carrier) carrier selection methodology. With the full 2-PIC methodology, customers will be able to presubscribe to one telecommunications carrier for interLATA toll calls and presubscribe to the same or a different participating telecommunications carrier, including their existing local exchange company, for all intraLATA toll calls. Orders for changes will be accepted and processed beginning on the implementation date.

TelePacific employees who communicate with the public, accept customer orders, and serve in customer service capacities will be trained to explain the process to customers for making PIC changes for intraLATA toll calls. Business Office personnel will be prepared to make changes in customer records based upon requests from customers or carriers and direct customers to their chosen intraLATA carriers. Processes will be in place to provide new customers with an opportunity to choose their intraLATA toll carrier from a list of available carriers.

New Customers

Customers who contact TelePacific requesting new telephone exchange service will be provided a list of telecommunications carriers available to provide interLATA toll service. Upon implementation of intraLATA toll presubscription, the customer will be provided a second list of carriers, including TelePacific, that provide intraLATA toll service in their exchange. The list of intraLATA toll carriers will be presented in a competitively neutral manner. Customers who do not make a positive choice for an intraLATA toll carrier will be identified within TelePacific's system as a "no-PIC" and will not be automatically defaulted to a carrier. Customers identified as "no-PIC" within TelePacific's systems will be required to dial 101XXXX to place intraLATA toll calls until they make an affirmative choice for an intraLATA toll carrier.

### III. Customer Education/Notification

Customers will receive information explaining their opportunity to select an intraLATA carrier a minimum of 30 days in advance of the offering of intraLATA toll dialing parity via a bill message. In addition, during the 30 days following implementation of intraLATA Dialing Parity, customers will receive a bill insert also explaining their opportunity to select an intraLATA carrier. TelePacific anticipates that promotional strategies by carriers will contribute to customer awareness of intraLATA toll dialing parity. Customer telephone directories will be updated as new editions are published to reflect the opportunity for customers to choose an intraLATA toll carrier.

### IV. Carrier Notification

Current interexchange carriers will be notified of TelePacific's intraLATA toll dialing parity implementation via letter approximately 90 days in advance of the proposed implementation date. Carriers should provide a list of exchanges in which they plan to offer intraLATA toll service at least 60 days in advance of TelePacific's implementation date. TelePacific needs notification in advance to include the carrier on the list of participating carriers in each TelePacific exchange. Certified carriers who enter the market after implementation will be added to the list of participating carriers within 30 days of notifying TelePacific.

TelePacific will provide subscriber listing information to carriers in "readily accessible" tape or electronic formats in a timely manner as requested through the processes that currently exist for the interLATA market. The process includes subscriber listing updates to carriers for new customers who choose that carrier or of existing customers of a carrier who revise their subscriber listing information. In addition, carriers can obtain complete subscriber listings in several formats. The provision of this information is in compliance with FCC Order No. 96-333, Paragraph 389.

TelePacific will comply with Part 51, Sections, 305, 307, 325, 327, 329, 331, 333 and 335 of the FCC Order in providing the required information and notice to the public of network changes. TelePacific plans to file a public notice with the FCC, with possible migration of the notice to the Internet process as described in Section 329. The notice will include network information as outlined in Section 327. The notice will be provided within the timeframes described in Sections 331-333.



**EXHIBIT “G”**  
**SMALL & MINORITY OWNED TELECOMMUNICATIONS BUSINESS**  
**PARTICIPATION PLAN**

**US TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS**  
**SMALL AND MINORITY OWNED**  
**TELECOMMUNICATIONS BUSINESS PARTICIPATION**  
**PLAN**

**Submitted to:**

**Tennessee Regulatory Authority**  
**460 James Robertson Parkway**  
**Nashville, TN 37243-0505**

**Submitted by:**

**US TELEPACIFIC CORP. D/B/A**  
**TELEPACIFIC COMMUNICATIONS**  
**Pursuant to Section 16, Chapter 408**  
**Public Acts of 1995 dated June 6, 1995.**

**SMALL AND MINORITY OWNED TELECOMMUNICATIONS  
BUSINESS PARTICIPATION PLAN OF  
US TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS**

Policy Statement

US TelePacific Corp. d/b/a TelePacific Communications acknowledges the importance of supporting small and minority owned telecommunications business participation in the telecommunications industry and the overall general business participation in the telecommunications Tennessee business operations, it is the policy of US TelePacific Corp. d/b/a TelePacific Communications to provide practicable opportunity for Small Telecommunications and Minority Owned Telecommunications Business to compete for contracts and subcontracts for goods and of like-kind goods and services to US TelePacific Corp. d/b/a TelePacific Communications is committed to the identification and selection of qualified Small Telecommunications Business and Minority Owned Telecommunications Business in this respect.

Further, with respect to its Tennessee business operations, it is the policy of US TelePacific Corp. d/b/a TelePacific Communications to provide information on programs, if any, to provide technical assistance to Small Telecommunications Business and Minority Owned Telecommunications Businesses when and where available in Tennessee.

Further, US TelePacific Corp. d/b/a TelePacific Communications acknowledges its obligation to contribute its share to the fund established by the Department of Economic and Community Development in accordance with Section 17 of Chapter 408 of the Public acts of 1995 (the "Act") for the purpose of funding the small and minority owned telecommunications business assistance program which provides for loan guarantees, technical assistance and services, and consulting education services.

Definitions

"Act" - Section 16 and 17 of Chapter 408 of the Public Acts of 1995.

"Minority Owned Telecommunications Business" - a telecommunications business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages the daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000), or as otherwise modified or amended in the future by the legislature for the State of Tennessee.

- a) "Personally Manages" in this context shall mean actively involved in the day-to-day management.
- b) "Controls" in this context shall mean exercising the power to make policy decisions.
- c) "Who is impeded from normal entry" in this context shall mean individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals and as provided in the regulations implementing Sections 8(a) and 7(j) of the Small Business Act, as amended by the Business Opportunity Development Reform Act of 1988, and Business Opportunity Development Reform Act Technical Corrections Act, (15 U.S.C. 637(a) and 636(j), as amended by Pub. L. 100-656 and Pub. L. 101-37.

"Small Telecommunications Business" - A telecommunications company with annual gross receipts of less than four million dollars (\$4,000,000), or as otherwise modified or amended in the future by the legislature for the State of Tennessee.

"Subcontract" - Any agreement (other than one involving an employer-employee relationship) entered into by US TelePacific Corp. d/b/a TelePacific Communications with a non-affiliated company or individual calling for direct or indirect purchase of raw materials, components, supplies and services needed to support US TelePacific Corp. d/b/a TelePacific Communications's operations.

### Goals

The goals of US TelePacific Corp. d/b/a TelePacific Communications's Small and Minority Owned Telecommunications Business Participation Plan is to identify Small Telecommunications Business and Minority Owned Telecommunications Businesses which are qualified to provide goods and services and to promote awareness among Small Telecommunications Businesses and Minority Owned Telecommunications Businesses as to opportunities to develop business relationships with US TelePacific Corp. d/b/a TelePacific Communications

### Plan Implementation

US TelePacific Corp. d/b/a TelePacific Communications will invite bids, or issue reports for proposals, or otherwise solicit offers from Small Telecommunications Business and Minority Owned Telecommunications Business, except in the case of emergencies, or in cases where US TelePacific Corp. d/b/a TelePacific Communications is bound by contract to purchase goods and

services from other sources, to furnish specified goods or services to US TelePacific Corp. d/b/a TelePacific Communications in furtherance of its Tennessee operations.

#### Plan Administration

In conducting its business affairs in Tennessee, US TelePacific Corp. d/b/a TelePacific Communications will appoint one of its employees as the Administrator of the Small and Minority Owned Telecommunications Business Participation Plan. The Administrator will be responsible for obtaining and utilizing available resources for identifying Small Telecommunications Business and Minority Owned Telecommunications Businesses interested and qualified in furnishing goods and services to US TelePacific Corp. d/b/a TelePacific Communications and to cultivate an awareness among such businesses as to any opportunities to develop business relations with US TelePacific Corp. d/b/a TelePacific Communications. The Administrator will also serve as a resource for technical assistance to Small Telecommunications Businesses and Minority Owned Telecommunications Business and will refer such businesses to sources of information and other technical assistance.

#### Plan Administrator

The administration of this Plan will be under the direction of (hereinafter called the "Administrator"):

|            |   |
|------------|---|
| Name:      | Jane Delahanty  |
| Title:     | Asst. VP Regulatory Affairs                               |
| Address:   | 515 S. Flower Street, 49th Floor<br>Los Angeles, CA 90071 |
| Telephone: | (213) 213-3288  |
| Facsimile: | (213) 213-3100  |

The duties of the Administrator are, among other things:

1. To develop policies and procedures to assure success of the Plan.
2. To maintain a current Plan acceptable to the Tennessee Regulatory Authority.
3. To conduct certification surveys as to the status of suppliers.
4. To establish and maintain a database and records in support of the Plan pursuant to the requirements of the Tennessee Regulatory Authority.

5. To search diligently for qualified small and minority owned telecommunications businesses and concerns through:
  - a. The Small Business Administrations' Procurement Automated Source System (PASS), and publications of the Office of Minority Business Data Center in the Department of Commerce and the Office of Minority Small Business and Capital Ownership Development in the Small Business Administration.
  - b. Local and national associations and Minority Supplier Development councils.
  - c. Participation in trade fairs and industry meetings.
  - d. Advertisement in the industry and local publications.
6. To prepare and submit such forms and information as may be required by the Tennessee Regulatory Authority.
7. Maintain liaison and cooperation with the Tennessee Regulatory Authority, and other agencies of the state of Tennessee to find and utilize qualified business concerns defined herein.
8. To support activities for assisting buyers in locating and qualifying the business concerns defined herein.
9. To provide required records and reports to cooperate in any authorized surveys by the Tennessee Regulatory Authority.

#### Compliance Records

US TelePacific Corp. d/b/a TelePacific Communications will submit reports, as may be required, for use in connection with subcontracting plans by the Tennessee Regulatory Authority and/or the State of Tennessee. US TelePacific Corp. d/b/a TelePacific Communications will cooperate fully with all reasonable and appropriate surveys or studies required by the contracting agency in determining program compliance. However, US TelePacific Corp. d/b/a TelePacific Communications reserves the right to designate documents, reports, surveys and/or studies as "confidential" or "proprietary".

### Record Maintenance

US TelePacific Corp. d/b/a TelePacific Communications will maintain records relating to US TelePacific Corp. d/b/a TelePacific Communications's Small and Minority Owned Telecommunications Business Participation Plan for the purpose of evidencing the implementation of this policy, for use by US TelePacific Corp. d/b/a TelePacific Communications in evaluating the effectiveness of the Plan and in obtaining the goals of the Plan, and for use in updating the Plan on an annual basis with the Tennessee Regulatory Authority, or as otherwise required.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2000.

US TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS

By: \_\_\_\_\_

\_\_\_\_\_  
Jane Delahanty, Asst. VP Regulatory Affairs

EXHIBIT "H"  
PRE-FILED TESTIMONY



## PRE FILED TESTIMONY OF JANE DELAHANTY

### I. Introduction

1. **Q. Please state your name and business address.**

A. My name is Jane Delahanty. My business address is 515 S. Flower Street; 49<sup>th</sup> Floor; Los Angeles, California 90071.

2. **Q. By whom are you employed and in what capacity?**

A. I am the Assistant Vice President, Regulatory Affairs of U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific").

3. **Q. Please give a brief description of your background and experience in business and telecommunications.**

A. I have 34 years of experience in the telecommunications industry. Prior to joining TelePacific in 1999, I served as Director, Regulatory Affairs and Tariffs, for GST Telecom, Inc. In that capacity I was responsible for directing the regulatory activities of GST, its affiliates and subsidiaries in the interstate, international and in multiple state jurisdictions. Before joining GST, I was Regulatory Affairs Manager at Cyberlink, Inc., an international resale carrier, where I managed tariff development and regulatory and business corporation applications, filings, compliance and reporting. From 1966 until 1993, I was with GTE at both the operating company and corporate level. My positions with GTE included responsibility for tariff planning and development, CABS system implementation, industry affairs/intercompany relations, private line network sales and business office customer service. I hold a Master of Business Administration Degree in Telecommunications Management from the University of Dallas Graduate School of Management and a Bachelor of Arts Degree in History from Mount Saint Mary's College.



1       7.     **Q.     Please describe the services TelePacific intends to provide within the State of**  
2               **Tennessee.**

3             A.     TelePacific expects to offer a full array of local exchange and  
4               interexchange services to customers, including the following:

5               Interexchange (switched and dedicated services):

- 6               A.     1+ and 101XXXX outbound dialing;
- 7               B.     800/888 toll-free inbound dialing;
- 8               C.     Calling cards; and
- 9               D.     Data Services.

10              Local Exchange:

- 11             A.     Local Exchange Services for business and residence telecommuter customers  
12               that will enable customers to originate and terminate local calls in the local  
13               calling area served by other LECs.
- 14             B.     Switched local exchange services, including basic service, trunks, carrier  
15               access, and any other switched local services that currently exist or will exist in  
16               the future.
- 17             C.     Non-switched local services (e.g., private line) that currently exist or will exist  
18               in the future.
- 19             D.     Centrex and/or Centrex-like services that currently exist or will exist in the  
20               future.
- 21             E.     Digital subscriber line, ISDN, and other high capacity services.

22             In addition to the services listed above, TelePacific, through interconnection with other  
23             carriers, will provide such services as 9-1-1, directory assistance and operator services.

24       8.     **Q.     How does TelePacific intend to provide service in the state of Tennessee?**

25             A.     TelePacific will initially resell the facilities of the existing LECs or underlying  
26               carriers that presently serve Tennessee. TelePacific will primarily resell the facilities and  
27               services of BellSouth. TelePacific will also use unbundled network elements and services  
28               purchased from BellSouth and other incumbent local exchange providers, where  
29               applicable, to provide service through TelePacific's facilities. When TelePacific installs  
30               facilities in Tennessee, it will probably use the following configuration of equipment:  
31               TelePacific will provide voice, high speed data and internet access services through a  
32                 
33

1 combination of the latest technology switching and transport media comprised of the  
2 Lucent #5 ESS switch, ADSL/SDSL transport and Internet service equipment and the  
3 latest Optical multiplexer DACs configurations. Services will be delivered over a  
4 combination of delivery mechanisms including leased facilities, incumbent local carriers'  
5 unbundled network elements, utilizing both copper and fiber transport media, as well as  
6 via TelePacific constructed facilities.

1 8. Q. What carrier will TelePacific utilize as its underlying carrier for services in  
2 Tennessee?

3  
4 A. For interexchange service, TelePacific intends to utilize either Sprint or Cable &  
5 Wireless as its underlying carrier. TelePacific intends to offer intraexchange service  
6 using facilities of the incumbent local exchange telephone companies ("LECs") in  
7 Tennessee. The company intends to initially negotiate with BellSouth.

8 9. Q. Does TelePacific have authorization to provide intrastate telecommunications  
9 services in any other state?

10 A. Yes. TelePacific is currently authorized to provide local exchange and  
11 interexchange services in California, Colorado, Florida, Indiana, Kansas,  
12 Massachusetts, Michigan, New Jersey, Nevada, Ohio, Oregon, Pennsylvania,  
13 South Carolina, Texas, Virginia, Washington, Wisconsin and the District of  
14 Columbia, and interexchange services only in Georgia. TelePacific is in the  
15 process of applying for authorization to provide competitive local exchange and  
16 interexchange services in approximately 30 states. TelePacific is currently  
17 providing service in California and Nevada.

18 10. Q. Has TelePacific ever had an application for a certificate of public convenience  
19 and necessity denied?

20 A. No.

21 11. Q. Does TelePacific intend to file a tariff with the Commission?

22 A. Yes. TelePacific will file its tariff subsequent to certification and prior to commencing  
23 operations as required by commission rules.  
24

1  
2 **12. Q. Is Applicant willing and able to adhere to all applicable TRA policies, rules and**  
3 **orders?**

4  
5 A. Yes. TelePacific is willing to adhere to all applicable TRA policies, rules and  
6 orders. TelePacific will at all times provide and market services in accordance  
7 with current Commission policies and will attempt to comply with the terms of that  
8 order in every respect possible.

9 **13. Q. Has TelePacific provided any intrastate telecommunications services within the**  
10 **State of Tennessee?**

11 A. No it has not.

12 **14. Q. What rates will TelePacific charge upon receipt of certification?**

13 A. TelePacific will charge the tariffed rates approved by the Commission.

14 **15. Q. How will TelePacific market services in Tennessee?**

15  
16 A. TelePacific Communications conducts sales using four internal methods:

- 17 1) Web-based sales  
18 2) Direct Sales  
19 3) Strategic marketing to large accounts

20 There are two external methods:

- 21 1) Agents  
22 2) Wholesalers  
23

1  
2 III. Managerial, Technical and Financial Qualifications

3 16. **Q. Does TelePacific have sufficient managerial, technical, and financial resources**  
4 **and ability to provide the telecommunications services proposed in its Application?**

5 A. Yes. TelePacific has sufficient technical, financial, and managerial resources and ability  
6 to provide the telecommunications services for which authority is sought herein. TelePacific's  
7 personnel represent a broad spectrum of business and technical disciplines and possess many  
8 years telecommunications experience. The qualifications and experience of TelePacific's key  
9 management team are contained in Exhibit D which is attached to our Application.  
10

11 17. **Q. How does TelePacific handle customer service requests?**

12 A. TelePacific's customer service representatives are available to assist its customers  
13 and will promptly respond to all customer inquiries. Customers may call 877-  
14 487-8722 toll free or 213-213-3000. The Company's address and applicable local  
15 or toll free number will be printed on the customer's bill. Alternately, customers  
16 wishing to communicate with a TelePacific customer service representative in  
17 writing may send correspondence to TelePacific at:

18  
19 U.S. TelePacific Corp. d/b/a TelePacific Communications  
20 ATTN: Customer Service  
21 515 S. Flower Street; 49<sup>th</sup> Floor  
22 Los Angeles, CA 90071  
23

1  
2 In addition customers may contact TelePacific via its website,  
3 www.TelePacific.com.

4 TelePacific's customer service representatives are prepared to respond to a broad  
5 range of service matters, including inquiries regarding: (1) the types of services  
6 offered by TelePacific and the rates associated with such services; (2) monthly  
7 billing statements; (3) problems or concerns pertaining to a customer's current  
8 service; and (4) general service matters.

9  
10 18. **Q. Please describe the financial condition of TelePacific.**

11 A. In support of TelePacific's financial ability to provide the services sought herein, a copy  
12 of TelePacific's Audited Financial Statements for the years ended December 31, 1998 and  
13 1999, was submitted as Exhibit C to its Application.



IV. Public Interest

19. **Q. How will residents of Tennessee benefit from TelePacific's services and presence in Tennessee?**

A. The Commission's grant of this certificate is in the public interest because consumers of telecommunications services within TelePacific's service territory will receive increased choice, improved quality of service, and heightened opportunities to obtain improved technology. Market incentives for new and old telecommunications providers in Tennessee will be improved greatly through an increase in the diversity of suppliers and competition within the local exchange telecommunications market. Consistent with the Commission's intent to aid in the development of a competitive telecommunications environment in Tennessee, the granting of a certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications infrastructure through greater reliability of services and an increase in competitive choices.

1     20.     **Q.     Does this conclude your testimony?**

2             A.     Yes. I would like to thank the Commission for this opportunity to provide information  
3                   relevant to TelePacific's Application and am ready to provide any additional  
4                   information that the Commission may need in making its decision.

**VERIFICATION OF APPLICANT**

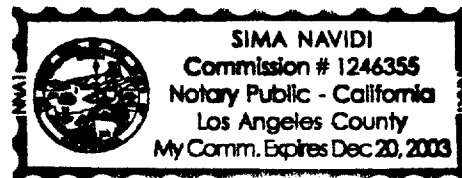
I, Jane Delahanty, Assistant Vice President of Regulatory Affairs of US TelePacific Corp. d/b/a/ TelePacific Communications, a California Corporation, the applicant for a Certificate of Public Convenience and Necessity from the Public Service commission of the State of Tennessee, verify that based on information and belief, I have knowledge of the statements in the foregoing Pre-Filed Testimony, and I declare that they are true and correct.

  
**Jane Delahanty**  
**Asst. VP of Regulatory Affairs**  
**US TelePacific Corp. d/b/a TelePacific Communications**

Sworn to me, the undersigned  
Notary Public on this  
19<sup>th</sup> day of July, 2000.

State of California  
County of Los Angeles

Simia Navidi  
Notary Public



# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached APPLICATION OF US TELEPACIFIC CORP. D/B/A TELEPACIFIC COMMUNICATIONS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY was served upon the following parties of record by depositing a copy of same in the United States Mail, First Class, Postage Prepaid, to their last known address as follows:

|   |   |  |
|---|---|--|
| <b><u>Ardmore Telephone Company, Inc.</u></b><br><br>P.O. Box 549<br>517 Ardmore Avenue<br>Ardmore, TN 38449<br>(205) 423-2131<br>(205) 423-2208 (Fax)  | <b><u>BellSouth</u></b><br><br>333 Commerce Street<br>Nashville, TN 37201-3300<br>(615) 214-3800<br>(615) 214-8820 (Fax)  | <b><u>Century Telephone of Adamsville</u></b><br><br>P.O. Box 405<br>116 N. Oak Street<br>Adamsville, TN 38310<br>(901) 632-3311<br>(901) 632-0232 (Fax) |
| <b><u>Century Telephone of Claiborne</u></b><br><br>P.O. Box 100<br>507 Main Street<br>New Tazewell, TN 37825<br>(423) 626-4242<br>(423) 626-5224 (Fax) | <b><u>Century Telephone of Ooltewah-Collegedale, Inc.</u></b><br><br>P.O. Box 782<br>5616 Main Street<br>Ooltewah, TN 37363<br>(423) 238-4102<br>(423) 238-5699 (Fax) | <b><u>Citizens Communications Company of Tennessee</u></b><br><br>P.O. Box 770<br>300 Bland Street<br>Bluefield, WV 24701                                |
| <b><u>Citizens Communications Company Of The Volunteer State</u></b><br><br>P.O. Box 770<br>300 Bland Street<br>Bluefield, WV 24701                     | <b><u>Loretto Telephone Company, Inc.</u></b><br><br>P.O. Box 130<br>Loretto, TN 38469<br>(931) 853-4351<br>(931) 853-4329 (Fax)                                      | <b><u>Millington Telephone Company, Inc.</u></b><br><br>4880 Navy Road<br>Millington, TN 38053<br>(901) 872-3311<br>(901) 873-0022 (Fax)                 |

|   |   |  |
|---|---|--|
| <p><b><u>Sprint-United</u></b></p> <p>112 Sixth Street<br/>Bristol, TN 37620<br/>(423) 968-8161<br/>(423) 968-3148 (Fax)</p>  | <p><b><u>TDS Telecom-Concord Telephone Exchange, Inc.</u></b></p> <p>P.O. Box 22610<br/>701 Concord Road<br/>Knoxville, TN 37933-0610<br/>(423) 966-5828<br/>(423) 966-9000 (Fax)</p> | <p><b><u>TDS Telecom-Humphreys County Telephone Company</u></b></p> <p>P.O. Box 552<br/>203 Long Street<br/>New Johnsonville, TN<br/>37134-0552<br/><br/>(931) 535-2200<br/>(931) 535-3309 (Fax)</p> |
| <p><b><u>TDS Telecom-Tellico Telephone Company, Inc.</u></b></p> <p>P.O. Box 9<br/>102 Spence Street<br/>Tellico Plains, TN 37385-0009<br/><br/>(423) 671-4600<br/>(423) 253-7080 (Fax)</p> | <p><b><u>TDS Telecom-Tennessee Telephone Company</u></b></p> <p>P.O. Box 18139<br/>Knoxville, TN 37928-2139<br/>(423) 922-3535<br/>(423) 922-9515 (Fax)</p>                           | <p><b><u>TEC-Crockett Telephone Company, Inc.</u></b></p> <p>P.O. Box 7<br/>Friendship, TN 38034<br/><br/>(901) 677-8181</p>   |
| <p><b><u>TEC-People's Telephone Company, Inc.</u></b></p> <p>P.O. Box 310<br/>Erin, TN 37061<br/><br/>(931) 289-4221<br/>(931) 289-4220 (Fax)</p>   | <p><b><u>TEC-West Tennessee Telephone Company, Inc.</u></b></p> <p>P.O. Box 10<br/>244 E. Main Street<br/>Bradford, TN 38316<br/><br/>(901) 742-2211<br/>(901) 742-2212 (Fax)</p>     | <p><b><u>United Telephone Company</u></b></p> <p>P.O. Box 38<br/>120 Taylor Street<br/>Chapel Hill, TN 37034<br/><br/>(931) 364-2289<br/>(931) 364-7202 (Fax)</p>                                    |

This the 21 day of Aug, 2000.

  
Lance J.M. Steinhart  
Attorney at Law

EXHIBIT "I"  
NUMBERING ISSUES & TENNESSEE SPECIFIC OPERATION ISSUES

Numbering Issues

1. Applicant's expected demand for NXXs within a year of approval of our application is 60 to 80 NXXs per NPA.
2. Applicant estimates it will request 60 NXXs from NANPA when we establish our service footprint.
3. We expect to establish our initial service footprint in the 615 and 931 NPAs within 6 months of certification.
4. The company will sequentially assign numbers within NXXs if it is required by Commission rules and regulations. In other jurisdictions customer requirements have dictated the non-sequential assignment of telephone numbers.
5. The company will follow NANPA guidelines and Commission regulations and assign numbers accordingly.
6. When ordering NXXs for growth, we follow the forecasting guidelines set by NANPA and the state regulatory body. In the California jurisdiction we currently apply a 6 or 12 month forecast, depending on the jeopardy situation in a given NXX.

Tennessee Specific Operation Issues

1. Our current billing system will allow us to bill the calling plan in compliance with TCA Section 65-21-114.
2. At this time, the company is not aware of the Tennessee County Wide Calling database maintained by BellSouth and the procedures to enter your telephone numbers on the database. The company intends to address all interconnection requirements and procedures with Bell South during the negotiation process and prior to the provision of local exchange service.
3. The company initially intends to provide service in Nashville. It is the Company's usual practice to mirror the calling pattern on the incumbent LEC, therefore this is how the company will provide metro area toll-free calling around Memphis, Nashville, Knoxville & Chattanooga.

4. At this time, the company is not aware of the MAC database maintained by BellSouth and the procedures to enter your telephone number on the database. The company intends to address all interconnection requirements and procedures with Bell South during the negotiation process and prior to the provision of local exchange service.
5. Employee responsible to work with the TRA on resolving customer complaints:  
Regulatory contact: Jane Delahanty  
213-213-3000  
  
Customer Service contact: Vicki Rifkin  
213-213-3000
6. The company intends to use telesales by its own employees. The company is aware of the telemarketing statutes and limitations found in TCA Section 65-4-401 and Chapter 1220-4-11 and will make every effort to comply with these regulations.